TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902. 1903.

No 154. 188.

EDWIN F. BROWN, AS RECEIVER OF THE PEOPLE'S NATIONAL BANK OF DENVER, COLORADO, APPELLANT,

vs.

GEORGE C. SCHLEIER AND THE PEOPLE'S NATIONAL BANK OF DENVER, COLORADO.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

FILED JANUARY 13, 1903.

(13,782.)

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(18,782.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

No. 554.

EDWIN F. BROWN, AS RECEIVER OF THE PEOPLE'S NATIONAL BANK OF DENVER, COLORADO, APPELLANT,

vs.

GEORGE C. SCHLEIER AND THE PEOPLE'S NATIONAL BANK OF DENVER, COLORADO.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

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Pleas and proceedings in the United States circuit court of appeals for the eighth circuit, at the September term, 1902, of said court, begun and held at the United States court-house in the city of Denver, Colorado, on the first Monday in September, to wit: the first day of September, A. D. 1902, and which said September term, 1902, was adjourned from the city of Denver, Colorado, to the city of St. Louis, Missouri, as provided by law, before the Honorable Walter H. Sanborn and the Honorable Amos M. Thayer, circuit judges, and the Honorable William Lochren, district judge.

[Seal United States Circuit Court of Appeals, Eighth Circuit.]

Attest: JOHN D. JORDAN,
Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

Be it remembered that heretofore, to wit, on the first day of March, A. D. 1902, a transcript of record, pursuant to an appeal allowed by the circuit court of the United States for the district of Colorado, was filed in the office of the clerk of the United States circuit court of appeals for the eighth circuit, in a certain cause wherein Edwin F. Brown, as receiver of the People's National Bank of Denver, Colorado, was appellant, and George C. Schleier and The People's National Bank of Denver, Colorado, were appellees, which said transcript of record is in the words and figures following, to wit:

1 Pleas in the Circuit Court of the United States, for the District of Colorado, Sitting at Denver.

Be it Remembered, that heretofore, and on, to wit, the 22nd day of December, A. D. 1900, came Earl M. Cranston, as Receiver of The Peoples National Bank of Denver, Colorado, by Messrs. Cranston, Pitkin, and Moore, H. M. Orahood, J. H. Brown, and Watters & Kendall, his solicitors, and filed in said court his bill of complaint; and sued out of and under the seal of said court a subpoena in chancery against George C. Schleier and The Peoples National Bank of Denver, Colorado.

And the said bill of complaint is in words and figures as follows, to wit:

United States of America,
District of Colorado—ss.

In the Circuit Court of the United States for the Eighth Judicial Circuit in and for the District of Colorado Aforesaid.

Earl M. Cranston, as Receiver of the Peoples National Bank of Denver, Colorado, a National Banking Association, Plaintiff,

vs.

2 George C. Schleier and The Peoples National Bank of Denver, Colorado, a National Banking Association, Defendants.

Bill of Complaint.

To the Honorable Judges of the Circuit Court of the United States for the District of Colorado:

Earl M. Cranston, as the Receiver of The People's National Bank of Denver, Colorado, a national banking association as hereinafter alleged, and a citizen of the State of Colorado, brings this his bill against said The People's National Bank of Denver, Colorado, a national banking association of the city of Denver, Colorado, a citizen of the State of Colorado, and against George C. Schleier of the city of Denver, Colorado, a citizen of the State of Colorado.

And thereupon your orator complains and says:

1. That the matter and amount involved in this suit exceeds exclusive of costs, the sum or value of two thousand dollars ($2,000) and arises under the laws of the United States, and that this suit is instituted by direction of an officer of the United States, viz: The Honorable Comptroller of the Currency of the

Treasury of the United States, and is also for the purpose of winding up the business and affairs of said The People's National Bank of Denver, a national banking association established under the laws of and the National Bank Act of the United States.

2. That on or about the 30th day of July, A. D. 1889, the Honorable Comptroller of the Currency of the Treasury of the United States, under and in pursuance of the statutes
3 of the United States and an application made to him thereunder, by an organization certificate bearing date July 1st, A. D. 1889, issued his certificate bearing date the 30th day of July, A. D. 1889, authorizing the existence and the commencement of the transaction of business by said defendant, The People's National Bank of Denver, Colorado; and on and after the said date, as hereinafter alleged, there was, and still is, existing the said defendant The People's National Bank of Denver, Colorado, created, organized and existing under and in pursuance of the said Statutes of the United States, providing for the creation of and governing banks, known as and called "The National Bank Act," in pursuance of said Articles of Association executed under section 5154 of the Revised Statutes of the United States, approved June 22, A. D. 1874, and the subsequent acts of the Congress of the United States in addition to and amendatory thereof (all of which said acts will for convenience and brevity be hereinafter referred to as "The National Bank Act").

3. That in and by its said Articles of Association and the authority of the provisions of said National Bank Act, said defendant, The People's National Bank of Denver, Colorado, was authorized and empowered, and the same did provide:

(a) That the corporate name and title of the said association should be "The People's National Bank of Denver."

(b) That the place where the banking house or office should be located, and its operations of discount and deposit
4 carried on, and its general business conducted, should be in the city of Denver, in the county of Arapahoe aforesaid.

(c) That the capital stock of said association should be three hundred thousand dollars ($300,000) to be divided into shares of one hundred dollars ($100) each.

(d) That said association should continue for a period of twenty (20) years from the said date of the execution of its said organization certificate, viz: From July 1st, A. D. 1889, unless sooner dissolved.

4. That at all the times hereinafter mentioned, on and after the said first day of July, A. D. 1889, said People's National Bank of Denver, of the city of Denver in the county of Arapahoe, aforesaid, became and was a national banking association, and as such was authorized and empowered and possessed, under and in pursuance of said National Bank Act, of the following powers and rights:

(a) To have succession for the period of twenty (20) years from said first day of July, A. D. 1889, unless sooner dissolved.

(b) To have, and did have, a fully paid up capital stock to the amount of three hundred thousand dollars ($300,000) of the par value of one hundred dollars ($100) per share; and

(c) To transact its usual business as such national banking association at an office or banking house located in the city of Denver, in the County of Arapahoe aforesaid; (sec. 5190).

5 5. That for the purpose of its said business as such national banking association, said defendant bank was also empowered to make contracts, to purchase, hold, and convey real estate for the following purposes and for no others.

(1st) Such as should be necessary for its, said association's immediate accommodation in the transaction of its business.

(2d) Such as should be mortgaged to it in good faith for debts previously contracted.

(3d) Such as should be conveyed to it in satisfaction of debts previously contracted in the course of its dealings.

(4th) Such as it should purchase at sales under judgments, decrees or mortgages, to be held by such association, or should purchase to secure debts due to it; but should not hold possession of any real estate under mortgage, or the title and possession of any real estate purchased to secure any debts due to it, for a longer period than five years (5137).

6. But it was, at all the times herein mentioned, provided by said The National Bank Act, that said defendant association should not at any time be indebted or in any way liable to an amount exceeding the amount of its said capital stock, viz: Said three hundred thousand ($300,000) at such time actually paid in and remaining undiminished by losses or otherwise, except on account of discounts of the nature following:

(1st) Notes of circulation.

6 (2nd) Moneys deposited with or collected by said association;

(3d) Bills of exchange or drafts drawn against money actually on deposit to the credit of said association, or due thereto;

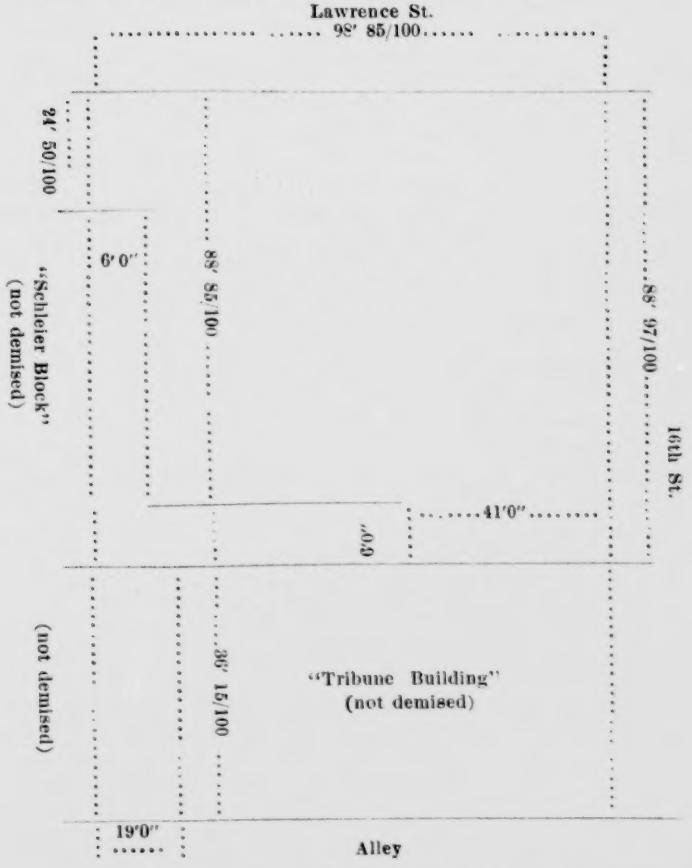
(4th) Liabilities to the stockholders of said association for dividends and reserve profits (5202).

7. That at the time of the creation and organization of said national banking association, its banking house and office was located in a store room in a building situated on Arapahoe Street between Sixteenth and Seventeenth Streets in said city of Denver, for which it paid rent, and then and there, and at all times thereafter, except as hereinafter alleged, continued to carry on and conduct its said national banking business.

8. That thereafter and during the month of September, A. D. 1889, the said defendant, George C. Schleier, was the owner in free simple and in possession of, lots numbered one (1), two (2), three (3), and four (4) all in block numbered seventy-five (75) in the East Division of the city of Denver, in the County of Arapahoe aforesaid, which said property is located at the corner of Lawrence and Sixteenth Streets, in said city of Denver, at a distance of about a block and a half from the said place of business of the said national banking association, situated on Arapahoe Street as aforesaid.

9. That during said month of September, 1889, and by an instrument in writing bearing date the 12th day of September, A. D. 1889, said national banking association, in violation of, in excess of, and in contravention of the provisions and prohibitions of said statutes of the United States comprising said National Bank Act and its said corporate powers, assumed to make and execute with the said defendant Schleier, an alleged pretended lease of the said real estate in said Block numbered seventy-five (75) which said pretended lease was recorded on September 21st, 1889, in book 547, at page 1 and the following pages of the records in the

office of the Clerk and Recorder of said Arapahoe County, and was and is in words and figures as follows, to wit:



8 This Indenture, made this twelfth day of September, A. D. 1889, between George C. Schleier, of the County of Arapahoe and State of Colorado, as party of the first part, and "The Peoples National Bank of Denver," a banking corporation existing under and by virtue of the Acts of the Congress of the United States as party of the second part,

Witnesseth that the said party of the first part, for and in consideration of the rents, covenants, and agreements hereinafter reserved and contained, to be paid, kept and performd by th said party of the second part, its successors and assigns, has demised and leased to the said party of the second part, all those premises situate, lying, and being in the City of Denver in

the County of Arapahoe and State of Colorado, known and described as follows, to wit: Commencing at the most northerly corner of lot one (1) in block seventy-five (75) in the East Division of the city of Denver; thence southwesterly along Lawrence Street ninety-eight and eighty-five one hundredths (98.85) feet; thence along the northerly wall of the building known as the "Schleier Block," and of the office and boiler room addition thereto, upon the outside thereof, one hundred and twenty-five (125) feet to the alley in said block; thence northeasterly along the said alley nineteen (19) feet; thence at right angles in a northwesterly direction thirty-six and fifteen one hundredths (36.15) feet; thence in a northeasterly direction in a straight line to a point on the line of Sixteenth Street, which is eighty-eight and ninety-seven one hundredths (88.97) feet southeasterly from Lawrence Street; thence northwesterly along the line of Sixteenth Street eighty-eight and ninety-seven one hundredths (88.97) feet to the place of beginning, being parts of lots one (1) two (2), three (3), and four (4), in block seventy-five (75) aforesaid; Provided, however, that no part of the realty now occupied by either the so-called "Schleier Block" or the office and boiler room addition thereto, or the old "Tribune Building," is hereby demised or let.

To have and to hold the said above demised premises, unto the said party of the second part, its successors and as-
9 signs, for the term of ninety-nine (99) years, from the first day of February, in the year of our Lord one thousand eight hundred and ninety, for and during and until the first day of February in the year of our Lord one thousand nine hundred and eighty-nine.

And the said party of the second part, in consideration of the leasing of the premises aforesaid, covenants and agrees for itself, its successors and assigns, with the said party of the first part, his heirs, personal representatives, and assigns, to pay to the said party of the first part, his heirs or assigns, as rent for the said demised premises the sum of thirteen thousand nine hundred and seventy-five ($13,975.00) dollars for each year during said term of ninety-nine years (99); said sum of thirteen thousand nine hundred and seventy-five ($13,975.00) dollars to to be paid in twelve equal instalments each year, the first instalment of eleven hundred sixty-four and fifty-eight hundredths ($1164.58) dollars to be paid on or before the fifteenth day of February, A. D. 1890, and then an instalment of eleven hundred sixty-four and fifty-eight hundredths ($1164.58) dollars on or before the fifteenth day of each and every month thereafter during said term.

The said party of the second part, its successors and assigns, in consideration of said letting as aforesaid, covenant and agree with the said party of the first part, his personal representatives heirs and assigns, that they will on or before the first day of May, A. D. 1890, remove or cause to be removed, at their own cost and expense, the store rooms now situate upon said demised ground, and that they will within eighteen months from February first, A. D. 1890, at their own cost and expense, build, erect, and complete a good, substantial building, not less than four stories in height, to cost not less than one hundred thousand ($100,000) dollars, and to face on both Sixteenth and Lawrence Streets, provided that the party of the first part shall give, or cause possession of said premises to be given to the party of the second part on or before the said first day of February, A. D. 1890, and neither rent nor the other covenants of this lease shall be operative against said party of the second part until such possession is given; and provided further, that the time allowed herein for the removal of said store buildings now on said premises, and for the erection of said building as aforesaid, shall be extended for the period of time said possession may be withheld from said party of the second part after February first, A. D. 1890. And it is further agreed and covenanted, that said building and improvements erected or made upon said premises shall at once become a part of the realty, that is to say, of the real estate hereinbefore demised, without any right on the part of any one whomsoever to remove the same or any part thereof, except for the purpose of remodelling, rebuilding, or improving the same.

And the said party of the second part, its successors and assigns, covenant and agree that they will, from time to time, and at all times during the continuance of this lease, keep any and all buildings and improvements which may be erected or made upon said demised premises in good order and repair at their own expense, and further, that, at the expiration of said ninety-nine (99) years, or fifty (50) years thereafter, if the same shall be extended as herein provided, they will peaceably and quietly leave, surrender, and yield up to the said party of the first part, his heirs and assigns the said demised premises, together with any and all buildings and improvements erected and made thereon.

And the said party of the second part, its successors and assigns, covenant and agree with said party of the first part, his heirs and assigns that they will, at their own expense, from time to time, and at all times during the continuance of this lease, insure any and all buildings and improvements to be erected on said premises from casualties by fire, for a sum not less than one-half of the then value of such buildings and im-

provements. And the said parties hereto agree, that in case of loss or damage by fire, if the same amount to one-fourth of the then value of said building or buildings or more, the said insurance shall be paid to some trustee to be appointed by a court of competent jurisdiction, upon application of either of the parties hereto, to be held by him for the purpose of reinvesting and applying the same in and to repairing and replacing said building or buildings, and the policies issued for the insurance of said building or buildings shall contain a clause or provision that the moneys to be paid thereunder in case of loss or damages as aforesaid, shall be paid and applied
11 as herein provided in case the loss or damage exceeds one-fourth of the value of said building or buildings, or more, as aforesaid. Should such sum, however, not be sufficient to repair or replace such building or improvements so damaged or destroyed, then and in that event the additional sum of money necessary to that end and for that purpose, shall be advanced and paid by the said party of the second part, its successors and assigns, and the building so damaged or destroyed by fire shall immediately and without any delay be restored and rebuilt by said party of the second part, its successors and assigns; provided, that in case of destruction of said building by fire, the cost of replacing the same need not be in excess of the value of the building destroyed at the time of its destruction.

And the said party of the second part, its successors and assigns, also covenant and agree with the said party of the first part, that they will on or before the first day of April, or before the property or any part thereof shall be advertised for sale, of each and every year during the existence of this lease, well and truly pay or cause to be paid, at their own cost and charges all rates, taxes, and assessments of whatsoever kind and nature, as shall or may from the first day of February, A. D. 1890, and during the term of ninety-nine (99) years hereby created, be lawfully imposed, levied on, charged or assessed upon and growing out of said demised premises. And if at any time after any such rate, tax or assessment shall have become due or payable, the party of the second part, its successors or assigns, shall neglect to pay such rate tax or assessment, it may be lawful for the party of the first part to pay the same at any time thereafter, and the amount of any and all such payments so made by the party of the first part shall be deemed and taken as, and is hereby declared to be so much further and additional rent for the above demised premises, to be immediately due from and payable by the said party of the second part, and the same may be collected as other rent, and in addition thereto whatever penalty or forfeiture is herein provided for the non-payment of rent, shall also exist and be available to

the party of the first part, and operate against the party of the second part, its successors and assigns, for the non-pay-
12 ment of any such rate, tax, or assessment, as herein provided.

It is expressly understood, agreed, and covenanted by and between the parties hereto, that if the rent above reserved, or any part thereof, shall be behind and remain unpaid for the period of fifteen days (15) after the same ought to be paid as aforesaid, or if default shall be made in any of the covenants or agreements herein contained, to be kept or performed by the said party of the second part, its successors or assigns, it shall and may be lawful for the party of the first part, his heirs, executors, administrators, agent, attorney or assign at his or their election and the said party of the first part, his heirs, personal representatives or assigns, shall have and are hereby given the right, power, and authority at any time after thirty days' notice (said notice to be served personally, if personal service can be had in the said city of Denver, but if such personal service can not be had, upon said party of the second part its successors or assigns in said city of Denver, then said notice to be mailed at the said city of Denver to the last known place of residence of the said party of the second part, its successors or assigns, as the case may be), to sell and dispose of this lease, and all the right, title, benefit and equity which the party of the second part, its successors and assigns may have in and to the same, and in and to the said demised premises, together with all improvements thereon, at public auction, at the front door of the County Court House in the City of Denver, County of Arapahoe and State of Colorado, or at the said demised premises at one of the front doors thereof, for the highest and best price the same will bring in cash, thirty days public notice having been previously given of the time and place of such sale, by advertisement in one of the morning daily newspapers at that time published in said city of Denver, and to make, execute, and deliver to the purchaser or purchasers at such sale, good and sufficient deed or deeds of conveyance for, or assignment of the said lease so sold, and of all the right, title, benefit, and equity of the said party of the second part, its successors and assigns thereunder and in said demised premises, and out of the proceeds or avails of such sale, and the purchase money paid thereon, after first paying all costs of advertising said sale, commissions and other
13 expenses, including all moneys advanced for taxes or other liens and assessments, and all rents due at the time of such sale, with interest thereon, to pay the overplus (if any) unto the said party of the second part, its successors and as-

signs on reasonable request. And it shall not be obligatory upon the purchaser or purchasers at any such sale, or subsequent sale or sales, to see to the application of the purchase money, which sale or sales so made, shall be a perpetual bar, both in law and equity, against the said party of the second part, its successors and assigns, and all other persons claiming the demised premises aforesaid, or any part thereof, by, from, through, or under said party of the second part, its successors or assigns or any of them, and either the first or second party hereto, their heirs, administrators, successors, or assigns, may become the purchaser of said lease, and of all the rights of the said party of the second part, its successors and assigns thereunder, and in said demised premises. And the said party of the second part, its successors and assigns, do hereby covenant and agree to surrender and deliver up the said above described premises and property peaceably, to the purchaser or purchasers of said lease, and of all the right, title, benefit and equity of the said party of the second part, its successors and assigns therein; and if the said party of the second part, or its legal representatives and assigns, shall remain in possession of the same thirty days after the termination of this lease, as before provided, or ten days after any sale of said lease and of the right, title, benefit, and equity of the said party of the second part, its successors and assigns therein as aforesaid, he or they shall be deemed guilty of a forcible and unlawful detainer of the premises, and shall be subject to all the conditions and provisions above named, and to eviction and removal, forcible or otherwise, with or without process of law, as above set forth.

It is further understood and agreed by and between the parties hereto, that the same rights and remedies available to the said party of the first part, his heirs, personal representatives and assigns, against the said party of the second part, its successors and assigns, under this lease shall exist and be available for default in the payment of any rent, rates, taxes,
14 or assessments reserved and to be paid under this lease, or for the breach or violation of any other covenant, condition, or agreement herein contained and to be kept and performed by the said party of the second part, its successors and assigns, against purchasers at any sale or sales made under this lease, as hereinbefore provided, their heirs, successors and assigns; and further, that said remedy of sale in case of failure to pay the rents, rates, taxes, or assessments at the time and in the manner herein provided in this lease, or in case of a breach or violation of any other covenant, condition, or agreement herein contained, to be kept or performed by the said party of the second part, its successors or assigns, shall exist

whenever there may be a default in the payment of the rent, rates, taxes, or assessments as herein provided, or a breach or violation of any agreement, covenant, or condition herein contained, notwithstanding one or more sales may have been had under the provisions hereof, said power of sale to be a continuing one until this lease shall have been terminated, but said remedy of sale shall not be construed as preventing the said party of the first part, his heirs, executors, administrators, agent, attorney, or assign from maintaining a personal action or actions to recover any rents becoming due hereunder or for moneys paid out on account of rates, taxes, or assessments on said demised premises.

It is further agreed and covenanted that any purchaser or purchasers of this lease, or of the right, title, and interest of said party of the second part, its successors and assigns, in said demised premises, at any sale or sales made hereunder as herein provided, their heirs, personal representatives, successors and assigns, shall take and hold said lease and said demised premises subject to all the agreements covenants and conditions, and the same rent to be paid, kept, and performed by the said party of the second part, its successors and assigns, and that all rights and remedies herein reserved or available to said party of the first part, his heirs, personal representatives and assigns, shall and are hereby expressly reserved to said party of the first part, his heirs, legal representatives and assigns, against any purchaser or purchasers at the first sale made hereunder, and against any purchaser or purchasers at any such subsequent sale or sales, their heirs, personal representatives, successors and assigns. For further identification a plat of the realty demised herein is hereto attached and made a part hereof, said plat being drawn on a scale of sixteen feet to the inch.

The said party of the second part, for itself, its successors and assigns, covenants and agrees to and with the said party of the first part, his heirs personal representatives and assigns, that it will not erect or cause or permit to be erected any part of said building upon that portion of the said demised premises included within the red lines shown upon said plat above the level of the 16th street grade, and said party of the second part, its successors and assigns, further covenant and agree that that portion of the said demised premises included within the said red lines shall remain open and unobstructed for the purpose of light and air for the said building proposed to be erected by the said party of the second part, its successors or assigns, as well as for the buildings now situate upon and owned, and which may be erected hereafter, by the said party of the first part, his heirs and assigns, upon the parts of said

lots one (1), two (2), three (3), and four, not hereby demised, and upon lots five (5) and six (6) all in said block seventy-five (75) in the East Division of said city, and that the said premises within the said red lines shall not be used for the purpose of storage of personal property of any kind; said premises included within said red lines being described as follows, to wit:

Commencing at a point on the outside line of the northeasterly wall of the said "Schleier Block" which is twenty-four (24) feet and six inches distant from Lawrence Street; thence in a southeasterly direction along the said outside line of said wall to a point which is eighty-eight and eighty-five one hundredths (88.85) feet distant from said Lawrence Street; thence at right angles in a northeasterly direction to a point on the outside line of the wall of the said "Tribune Building," and which point is forty-one (41) feet distant from Sixteenth Street; thence at right angles parallel with Sixteenth Street and in a northwesterly direction six (6) feet; thence at right angles parallel with Lawrence Street in a southwesterly direc-
16 tion to a point six (6) feet from the outside line of said wall of said "Schleier Block," thence at right angles parallel with Sixteenth Street towards Lawrence Street, to a point which is twenty-four (24) feet and six (6) inches distant from said Lawrence Street; thence at right angles to the point of beginning.

It is further understood and agreed by and between the parties hereto, that that portion of said demised premises included within the blue lines, as shown upon said plat, may be excavated, and that portion thereof beneath the official grade shall be for the exclusive use of the said party of the second part, its successors and assigns, that on the northeasterly side of said strip, the said party of the second part will erect or cause to be erected, at its own cost and expense, a foundation wall such as will be put in elsewhere for the building to be erected upon said demised premises the stone pillars of which said wall below the surface or official grade, shall rest six inches upon said strip, and that said wall is to be the exclusive property of the said party of the first part, except as it serves as an inclosing wall for the excavation to be made, that said excavation is to be covered in a substantial way by flag-stone, or other equally substantial covering, and after so covered, said strip, except the portion under said cover is to be left open and used as a private way for the building to be erected as aforesaid, as well as for the buildings now owned by the said party of the first part, and the buildings which may be erected hereafter by the said party of the first part, his heirs and assigns, upon any portion of said lots one (1),

two (2), three (3), four (4) five (5) and six (6) not hereby demised said strip in this paragraph referred to being described as follows, to wit:

Commencing at a point where the outside line of the northeasterly wall of the office and boiler room addition to the said "Schleier Block" intersects said alley; thence along said alley in a northeasterly direction nineteen (19) feet; thence at right angles parallel with Sixteenth Street in a northwesterly direction thirty-six and fifteen one-hundredths (36.15) feet; thence at right angles in a southwesterly direction nineteen (19) feet; thence at right angles in a southeasterly
17 direction thirty-six and fifteen one hundredths (36.15) feet to the place of beginning, being a strip of land nineteen (19) feet on said alley, by thirty-six and fifteen one hundredths (36.15) feet adjoining the office and boiler room addition to the said "Schleier Block."

It is further understood and agreed that no rights to any water from the artesian well located in the alley in said block seventy-five (75) shall pass hereunder.

The said party of the second part, its successors and assigns, further covenant and agree to and with the party of the first part that they will protect the walls of the so-called "Schleier Block" and of the office and boiler room addition thereto, and the walls of the "Tribune Building" adjoining the premises demised herein, and will save said party of the first part, his personal representatives, heirs, and assigns, harmless from any and all damage of whatsoever name and nature he or they may sustain by reason of any excavation for any building or improvements to be erected or made upon said demised premises.

The party of the first part further covenants and agrees, that the party of the second part, its successors and assigns, shall have the right to construct the footings for all foundation walls for its building beneath the foundation walls of the said "Schleier Block" and boiler room addition and the "Tribune Building" and to enter both of said buildings for the purpose of doing what may be necessary to properly support and maintain the walls and foundation of said block and buildings, provided the said party of the second part, its successors and assigns, shall do the same in a skillful and workmanlike manner, and said party of the second part, its successors and assigns, shall have said right and privilege without any additional cost or charge therefor.

It is further covenanted and agreed by and between all the parties hereto, that all the agreements, conditions and cove-

nants in this lease shall be binding upon the heirs, personal representatives, successors and assigns of the respective parties hereto.

And the said party of the first part, for himself, his heirs, executors and administrators, covenants and agrees to and with said party of the second part, its legal representa-
18 tives, successors or assigns, that at the time of the ensealing and delivery of these presents he is well seized of said premises in fee simple, and has good right, full power and lawful authority to let and demise the same in manner and form as aforesaid, and that the same are free and clear of all liens and encumbrances whatever.

It is expressly understood and agreed, that at the option of said party of the second part, its successors or assigns, the said party of the first part hereby agrees to extend this lease for a further term of fifty (50) years from the term of ninety-nine (99) years hereinbefore mentioned, at the same rent, and upon the same terms, conditions, agreements, and covenants herein contained;

Provided, however, that ninety (90) days' notice, prior to the expiration of said ninety-nine (99) years shall be given by the said party of the second part, its successors or assigns to the said party of the first part, his representatives, heirs, or assigns, of their intention to avail themselves of said option.

In Testimony Whereof the said party of the first part has hereunto set his hand and seal, and the said party of the second part has caused these presents to be signed by its president, attested by its cashier thereunto duly authorized, and its corporate seal to be hereunto affixed, all in duplicate, the day and year first above written.

[Seal] GEORGE C. SCHLEIER,

THE PEOPLES NATIONAL BANK OF DENVER,

By M. J. Lawrence, President.

Attest: C. Y. McCLURE, Cashier.

(Bank seal.)

The words, "above the level of the sixteenth street grade" and "the parts of" on page 11 and the words "and boiler room addition" on page 14 were interlined in writing before execution.

GEORGE C. SCHLEIER.
M. J. LAWRENCE, Pt.

Attest: T. M. PATTERSON
G. C. BARTELS
J. H. BLOOD.

State of Colorado,
County of Arapahoe—ss.

George C. Schleier appeared before me this fourteenth day of September, A. D. 1889, in person, and acknowledged the foregoing instrument to be his act and deed for the uses specified therein; and that M. J. Lawrence, as president, and Charles Y. McClure as Cashier, respectively, of The Peoples National Bank of Denver, appeared before me this fourteenth day of September, A. D. 1889, in person, and acknowledged the foregoing instrument to be the act and deed of The Peoples National Bank of Denver aforesaid, for the uses specified therein.

My commission expires May 18th, 1893.
Witness my hand and official seal.
[Seal] CARLOS WOOD,
Notary Public.

10. That, acting under and by virtue of said alleged pretended lease, and in accordance with the provisions thereof, and not otherwise, the said national banking association took possession of said premises on or about the first day of February, A. D. 1890, and thereafter, in alleged pretended accordance with the provisions of said alleged pretended lease erected upon the premises therein described a large and commodious office and store building, occupying the whole of said premises, as stipulated by said alleged pretended lease.

11. That said building (which, for convenience and brevity in reference will be hereinafter styled the "Bank Building"), was built of brick, stone, steel, iron, and timber, and consisted of eight stories or floors above the cellar, and was constructed according to and was fitted with the latest modern im-
20 provements in building such as gas and electricity, hot and cold water, two elevators, steam heating apparatus, and cost over the sum of the said capital stock of said defendant bank, that is to say, over the sum of three hundred thousand dollars ($300,000), viz, about the sum of three hundred and five thousand seven hundred and twenty-five and thirty-nine hundredths dollars ($305,725.39) all of which was done with the full knowledge, consent, and approval of said defendant Schleier.

12. That said bank building contained a large number of store and office rooms, viz: Six (6) store rooms on the ground floor, two (2) very large store or banking rooms, fitted with burglar-proof vaults, on the second or main floor, and about eighty-four (84) offices in the remaining stories thereof, and was built and adapted for being rented as a store and office building, as a real estate speculation, and was not confined to such a banking house or building as should be necessary for its

the said defendant bank's immediate accommodation in the transaction of its business, and for no other purpose, as by the said National Bank Act, provided.

13. That thereafter, and on or about the month of January, A. D. 1891, the said bank building having been completed and prepared for occupation, said defendant national banking association moved its place of business into the said building, and thereafter, at all the times hereinafter mentioned, used and occupied one-half of the first or main floor for the
21 transaction of its said banking business as well as the banking business of another corporation, created and existing under the laws of the State of Colorado, known as and called The People's Savings Bank; and thereafter rented, for pecuniary profit, as a real estate speculation, the rest, residue and remainder of the said building.

14. That thereafter, at all the times hereinafter mentioned the said defendant banking association continued in the ordinary conduct of its business as a national banking association and in the renting of the office rooms and stores in said building, conducting the same as a real estate speculation, until on or about the 19th day of July, A. D. 1893.

15. That on or about the 19th day of July, A. D. 1893, the said defendant banking association being unable to pay its depositors in the due course of business, in accordance with the provisions of said National Bank Act in such case made and provided, it was placed in the hands of the Comptroller of the Currency, and one J. B. Lazear was appointed to and did take charge of said bank, and its affairs, and acted as receiver thereof, until on or about the 21st day of August, A. D. 1893, and that thereafter, and at all the times hereinafter mentioned, as this plaintiff is informed and believes, and so charges the fact to be, the said defendant banking association was and still is insolvent.

16. That at all the times last aforesaid, prior, on, and subsequent to being placed in the hands of the Comptroller
22 of the Currency of the United States, it was discovered that the assets, business and affairs of the said defendant National Bank were very much involved with those of said The People's Savings Bank, with whom it was associated and doing business in the same banking room in said bank building, and that after so going into the hands of said J. B. Lazear, as receiver, the said defendant National Bank proceeded to wind up its affairs and dissolve as a banking association.

17. That thereafter, and on or about the 20th day of September, A. D. 1897, said defendant National Banking Association, in furtherance of its determination to liquidate, dissolve and wind up its affairs, issued a notice and called a special stockholders' meeting, of which the notice thereof was in words and figures as follows, to wit:

Stockholders' Meeting of the People's National Bank of Denver.

Notice is hereby given that a special meeting of the stockholders of The People's National Bank of Denver, Colorado, will be held at the banking room of said bank, on the 30th day of October, 1897, at 2 o'clock p. m. to consider a proposition to turn over the banking house of the said bank to George C. Schleier, the owner of the land on which the building is situated.

Owing to the fact that the income of the property is less than the fixed charges, it has become necessary to take some action to relieve the bank. It is important that all stockholders be present or duly represented. If you can not be present, please sign the enclosed proxy and return same to cashier at once. If you have no other, the name of Biddle Reeves is suggested for proxy.

By order of the board of directors.

23 Denver, September 20, 1897.

M. J. LAWRENCE, President.

J. H. CLEMES, Cashier.

18. And on the 28th day of September, A. D. 1897, said defendant National Banking Association, for the purposes aforesaid, issued another and further notice calling a special stockholders' meeting of which the notice thereof was in words and figures as follows, to wit:

Stockholders' Meeting of the People's National Bank.

Notice is hereby given that a special meeting of the stockholders of the People's National Bank of Denver, Colo., will be held at the banking room of said bank on the 30th day of October, 1897, at 2 o'clock p. m. to consider the advisability of the present stockholders, with such other persons as may desire to do so, organizing a corporation under the laws of the State of Colorado to control the bank's assets, and to perform such other acts as may be contemplated in the certificate of incorporation of such new company.

A reorganization, such as contemplated, with a small capitalization, will be a great saving to the stockholders in reducing the amount of taxes now paid by the bank.

If you can not be present at the meeting in person, kindly sign the inclosed proxy to Mr. Biddle Reeves, and mail to the undersigned.

THE PEOPLE'S NATIONAL BANK,
By M. J. Lawrence, President.

Denver Colo., September 28, 1897.

18. And on the ..... day of December, A. D. 1897, said defendant National Banking Association, for the purposes aforesaid, issued another and further notice, calling an annual stockholders' meeting, of which the notice thereof was in words and figures as follows, to wit:

24 Annual Stockholders' Meeting.

You are hereby notified that the annual meeting of the stockholders of the People's National Bank of Denver, Colorado, will be held in room 801, People's Bank Building, Denver, Colo., at 10 o'clock a. m. Tuesday, January 11, 1898.

At this meeting there will be an election of a board of directors for the ensuing year, and a proposition will then be submitted to wind up the business of the People's National Bank, and to make some suitable disposition of its assets; and such other business will be transacted as may be necessary or proper.

Please fill out enclosed proxy and mail to undersigned.

JAMES H. CLEMES, Cashier.

801 People's Bank Building, Denver, Colo.

19. And plaintiff further alleges that said banking house referred to in said stockholders' notice was the said banking house herein referred to in the allegations of this bill.

20. And plaintiff further alleges that for a long time prior to the giving of said stockholders' notice the said banking association and its officers and agents neglected the business of attending to the renting of the stores, offices, and rooms in said Bank Building, and neglected to keep the same in good order and repair, and brought the same into disrepute and allowed it to run down, and allowed the rents thereof to remain uncollectedand the taxes thereon toremain unpaid and also diverted the moneys and income received from the renting of the offices, stores, and rooms in said Bank Building to other purposes than the payment of the rent and the taxes and charges, repairs and expenses of taking care of said
25 Bank Building, so that on or about the 30th day of October, A. D. 1897, there was due and owing to the said defendant George C. Schleier, as rent under said alleged pretended lease, for the months of August, September, and October, A. D. 1897, the sum of eleven hundred and sixty-four

dollars and fifty-eight cents ($1164.58) due August 15th, 1897, the sum of eleven hundred and sixty-four dollars and fifty-eight cents ($1164.58) due September 15th, A. D. 1897, and the sum of eleven hundred and sixty-four dollars and fifty-eight cents ($1164.58) due the 15th day of October, A. D. 1897, and also the further sum of twenty-four hundred and eighteen dollars and five cents ($2418.05) due on account of the second half of the general taxes levied upon said premises for the year A. D. 1896, and also the sum of fifty-six dollars and forty cents ($56.40) due on account of an assessment made against said demised premises for the paving of the alley in the rear thereof, all of which said rents, taxes, and assessments the said defendant bank failed and neglected to pay, and permitted to remain unpaid.

21 Plaintiff further alleges that he is informed and believes and so charges the fact to be, that although it was and is represented in said notice calling said stockholders' meetings hereinbefore set forth, and also at the meetings of said stockholders, held in pursuance of said notices and by the officers of said defendant banking association, and by the attorneys and agents of said defendant Schleier, present
26 at said Stockholders' meetings, that the income of said property, meaning said Bank Building, was less than the fixed charges, in truth and in fact such was not the case, but that the rents and income from said property in the neglected condition in which it then was, because of the misconduct and neglect of the said banking association and its officers and agents to care for and look after the renting of the same and the collection of the rents and its maintenance, were, as this plaintiff is informed and believes, and so charges the fact to be, sufficient to pay the rents, and all charges due and required to be paid under the said alleged pretended lease, and to keep and maintain the said Bank Building in good order and repair.

22. Your orator further complaining alleges that said defendant banking association thereafter, and in violation of the statutes of the United States in such case made and provided, and contrary to the principles of equity governing the distribution and disposition of assets and payment of dividends on the dissolution of insolvent corporations, in consideration of being released from the obligation of paying such taxes and assessments under said alleged pretended lease upon said demised premises, and especially the said rent that had accrued for the said months of August, September, and October, A. D. 1897, and the second half of taxes for the year A. D. 1896, and the said alley assessment, and in virtue of the further consideration that he, the said Schleier, should release said

bank and all its stockholders from any and all liability which might thereafter accrue against them or either of them
27 under and by virtue of the covenants and conditions of said alleged pretended lease, and in consideration of the said defendant Schleier accepting as rent for the said demised premises for the month of October, A. D. 1897, the rents accruing from the tenants of said bank in said building, less the expense of running said building for said month, did pretend, by instruments in writing, to bargain, sell, assign, transfer, convey, surrender and yield up unto the said defendant Schleier his heirs and assigns, the said alleged pretended lease of the said demised premises therein described, including the improvements and the said bank building situate thereon and the term of years in said alleged pretended lease yet to come, and did cancel said alleged pretended lease, and did also, on or about said 30th day of October, A. D. 1897, surrender and deliver to the said Schleier the possession of the said premises, together with said bank building, and that ever since the 30th day of October, A. D. 1897, the said defendant Schleier has been and still is in the occupation and possession of the said premises, and said Bank Building, and claims to be the owner in fee simple thereof, free from any claim, right, title, or interest of any kind on the part of said defendant The People's National Bank of Denver, therein and thereto; that said instruments of writing purporting to make said surrender and cancellation of said lease and of the possession of said Bank Building, bore date October 30th, A. D. 1897, and were recorded on the 8th day of November, A. D. 1897, in book 1211, at
28 pages 98 and 100 thereof, in the office of the clerk and recorder of said Arapahoe County.

23. That said last mentioned instruments were and are in words and figures as follows, to wit:

Release of Lease.

Peoples Nat. Bank to George C. Schleier. Filed for record at 11:10 o'clock a. m., November 8th, 1897.

R. LeBERT, Recorder.

Whereas by lease or indenture dated September 12th, 1889, and recorded in book 547 commencing at page 1, of the records in the office of the clerk and recorder of Arapahoe County, State of Colorado, George C. Schleier demised and leased to the Peoples National Bank of Denver, those certain premises described in said lease, situate in the city of Denver, County of Arapahoe and State of Colorado, and also described as follows, to wit:

Commencing at the most northerly corner of lot one (1) in block seventy-five (75) in the east division of the city of Denver, thence southwesterly along Lawrence street ninety-eight and eighty-five one hundredths (98.85) feet thence along the northerly wall of the building known as "Schleier's Block" and the office and boiler room addition thereto, upon the outside thereof, one hundred and twenty-five (125) feet to the alley in said block; thence northeasterly along the said alley nineteen (19) feet; thence at right angles in a northwesterly direction thirty-six and fifteen one hundredths (36.15) feet thence in a northeasterly direction in a straight line to a point on the line of Sixteenth Street, which is eighty-eight and ninety-seven one hundredths (88.97) feet southeasterly from Lawrence Street; thence northwesterly along the line of Sixteenth Street eighty-eight and ninety-seven one-hundredths (88.97) feet to the place of beginning; being part of lots one (1) two (2), three (3), four (4), in block seventy-five (75) upon which premises is now situate the building known as the Peoples Bank Building.

29 Now, know all men by these presents: That the said The Peoples National Bank of Denver, doing business in the city of Denver, and organized under the national banking laws of the United States, in consideration of the said George C. Schleier releasing the said bank and its stockholders from the payment of the August and September 1897 rent for said premises and from the payment of the second half of the 1896 taxes against the same and the alley paving assessment against the same, and in further consideration that the said George C. Schleier releases said bank and all of its stockholders from any and all liabilities which may hereafter accrue against them, or either of them under and by virtue of any of the covenants or conditions of said lease, and in the further consideration of the said George C. Schleier accepting as rent for the month of October, 1897, the rents accruing from tenants in said building, less the expense of running the building for said month, has and hereby does bargain, sell, assign, transfer, convey, surrender and yield up unto the said George C. Schleier, his heirs and assigns, said lease and said premises therein and hereinbefore described, including the improvements and the building situate thereon and the term of years in said lease yet to come.

And it is further covenanted and agreed that said lease is hereby cancelled.

In Witness Whereof the said The Peoples National Bank of Denver has caused these presents to be signed in its name by Biddle Reeves, Chairman and Presiding Member and J. H. Clemes, its cashier and its corporate seal to be hereunto affixed this 30th day of October, A. D. 1897.

[Corporate Seal] THE PEOPLES NATIONAL BANK OF DENVER,
By Biddle Reeves,
Chairman and Presiding Member and
J. H. Clemes, its Cashier.

State of Colorado,
County of Arapahoe—ss.

I, Frank N. Bancroft, a notary public in and for said county, do hereby certify that Biddle Reeves, as chairman and presiding member, and J. H. Clemes, as cashier of the Peoples
30 National Bank of Denver, and who are personally known to me to be the persons whose names are subscribed to the foregoing instrument in writing, appeared before me this day in person and acknowledged that they signed, sealed, and delivered the same as the free and voluntary act of the said The Peoples National Bank of Denver for the uses and purposes therein set forth.

My notarial commission expires October 15th, 1898.
Witness my hand and seal this 30th day of October, A. D. 1897.

[Notarial Seal] FRANK N. BANCROFT,
Notary Public.

Release of Lease.

Peoples Nat. Bank to George C. Schleier. Filed for record at 1:25 o'clock p. m., November 8th, 1897.

R. LeBERT, Recorder.

Whereas by lease or indenture dated September 12th, 1889, and recorded in book 547 commencing at page 1, of the records in the office of the clerk and recorder of Arapahoe County, State of Colorado, George C. Schleier demised and leased to the Peoples National Bank of Denver, those certain premises described in said lease, situate in the city of Denver, County of Arapahoe and State of Colorado, and also described as follows, to wit:

Commencing at the most northerly corner of lot one (1) in block seventy-five (75) in the east division of the city of Denver, thence southwesterly along Lawrence street ninety-eight and eighty-five one hundredths (98.85) feet thence along the northerly wall of the building known as the "Schleier Block"

and of the office and boiler room addition thereto, upon the outside thereof, one hundred and twenty-five (125) feet to the alley in said block; thence northeasterly along the said alley nineteen feet; thence at right angles in a northwesterly direction thirty-six and fifteen one hundredths (36.15) feet; thence in a northeasterly direction in a straight line to a point on the line of Sixteenth Street, which is eighty-eight and ninety-seven one hundredths (88.97) feet southeasterly from Lawrence Street; thence northwesterly along the line of Sixteenth Street eighty-eight and ninety-seven one-hundredths (88.97) feet to the place of beginning being part of the lots one (1) two (2)
31 three (3) and four (4) in block seventy-five (75) upon which premises is now situate the building known as the Peoples Bank Building.

Now, know all men by these presents: That the said The Peoples National Bank of Denver, doing business in the city of Denver, and organized under the national banking laws of the United States, in consideration of the said George C. Schleier releasing the said bank and its stockholders from the payment of the August and September, 1897, rent for said premises and from the payment of the second half of the 1896 taxes against the same and the alley paving assessment against the same, and in the further consideration that the said George C. Schleier releases said bank and all of its stockholders from any and all liabilities which may hereafter accrue against them, or either of them, under and by virtue of any of the covenants or conditions of said lease, and in the further [condition] of the said George C. Schleier accepting as rent for the month of October, 1897, the rents accruing from tenants in said building, less the expenses of running the building for said month, has and hereby does bargain, sell, assign, transfer, convey, surrender and yield up unto the said George C. Schleier, his heirs and assigns, said lease and said premises therein and herebefore described, including the improvements and the building situate thereon and the term of years in said lease yet to come.

And it is further covenanted and agreed that said lease is hereby cancelled.

In Witness Whereof the said The Peoples National Bank of Denver has caused these presents to be signed in its name by M. J. Lawrence, its president, and J. H. Clemes, its cashier, and its corporate seal to be hereunto affixed, this 30th day of October, A. D. 1897.

[Corporate Seal] THE PEOPLES NATIONAL BANK OF DENVER,
By M. J. Lawrence, its President, and
J. H. Clemes, its Cashier.

State of Ohio,
County of Cuyahoga—ss.

I, Mahlon M. Chew, a Notary Public in and for said county, do hereby certify that M. J. Lawrence, as President of
32 The Peoples National Bank of Denver, and who is personally known to me to be the person whose name is subscribed to the foregoing instrument in writing, appeared before me this day in person and acknowledged that he signed, sealed, and delivered the same as the free and voluntary act of the said The Peoples National Bank of Denver, for the uses and purposes therein set forth.

My Notarial Commission expires December 8th, 1898.
Witness my hand and seal this 30th day of October, A. D. 1897.

[Notarial Seal] MAHLON M. CHEW,
Notary Public.

State of Colorado,
County of Arapahoe—ss.

I, Frank N. Bancroft, a Notary Public in and for said County, do hereby certify, that J. H. Clemes, as Cashier of the Peoples National Bank of Denver, and who is personally known to me to be the person whose name is subscribed to the foregoing instrument in writing, appeared before me this day in person and acknowledged that he signed, sealed and delivered the same as the free and voluntary act of the said the Peoples National Bank of Denver, for the uses and purposes therein set forth.

My notarial commission expires October 15th, 1898.
Witness my hand and seal this 8th day of November, A. D. 1897.

[Notarial Seal] FRANK N. BANCROFT,
Notary Public.

24. Your orator further alleges that thereafter and on or about the 30th day of November, A. D. 1899, at the September Term of the Honorable District Court, a court of record of the said State of Colorado, sitting in and for the County of Arapahoe in said state, in a certain cause pending therein, commenced by the service of summons and copy of the complaint on or about June 26th, A. D. 1897, one Fermor J. Spencer, as Assignee of said Peoples Savings Bank, as plaintiff, and said National Banking Association as defend-
33 ant, a judgment was rendered in favor of said plaintiff and against the said defendant, for the sum of four hundred and seventy-five thousand eight hundred and twenty-five dollars and seventy-one cents (475,825.71). That the pendency of said action wherein said judgment was rendered, was

well known by said defendant Schleier at the time of said alleged pretended surrender and cancellation of said alleged pretended lease of said premises.

25. That thereafter, by an instrument bearing date the 20th day of December, A. D. 1899, the Honorable Comptroller of the Currency of the United States having become satisfied of the insolvency of the said defendant national banking association, he did then and there, in pursuance of the said National Bank Act, and on or about the 20th day of December, A. D. 1899, appoint your orator, the plaintiff herein, as receiver of said defendant national banking association, the People's National Bank of Denver, Colorado, and authorized and directed the closing up and winding up of all the business and affairs of said association.

26. That thereupon this plaintiff duly qualified, and at all times thereafter hereinafter mentioned was, and still is, the receiver of said defendant national banking association, The People's National Bank of Denver, Colorado.

27. Your orator further alleges on information and belief, and so charges the fact to be, that said judgment has been paid only in part.

34 28. That thereafter, viz, on or about the 27th day of October, A. D. 1900, and prior to the commencement of this action, said the Honorable Comptroller of the Currency of the Treasury of the United States authorized, empowered and directed this plaintiff to commence and diligently prosecute this action, and this suit is commenced and [prosecured] in accordance with the said order and direction of an officer of the United States, to wit, the said Comptroller of the Currency of the United States.

29. And your orator avers that he is ready and willing and hereby offers to do and perform whatever shall be deemed by this Honorable Court to be equitable and conscionable under all the circumstances, as may be decreed and ordered upon a final hearing of this suit.

30. Wherefore, your orator prays, that forasmuch as he is without any adequate remedy at law in the premises, that the said defendants may be compelled to answer all and singular the premises in this bill of complaint contained, but not under oath, the answer under oath of said defendants and each of them being expressly hereby waived.

2d. And your orator further prays that a writ of subpoena may issue out of and under the seal of this Honorable Court,

and directed to the said George C. Schleier and the Peoples National Bank of Denver, Colorado, a national banking association who, are made defendants to this, your orator's
35 bill of complaint, commanding him and the said corporation by a certain day to be named, to appear before this court, and then and there answer the premises and abide the order and decree of the court.

3d. Your orator, upon final hearing, further prays for a decree declaring and adjudging the said alleged pretended lease purporting to have been made between the said national banking association, The People's National Bank of Denver, Colorado, and said defendant George C. Schleier, dated on or about September 12th, 1889, and recorded on or about September 21st, A. D. 1889, in book 547, at page 1 and following pages of the records in the office of the clerk and recorder of said Arapahoe County, State of Colorado, and also the said alleged pretended instruments of writing bearing date on or about October 30th, A. D. 1897, and recorded the 8th day of November, A. D. 1897, in book 1211, at pages 98 and 100 thereof, in the office of the clerk and recorder of said Arapahoe County, purporting to cancel said alleged pretended lease and yield up and surrender the same and the premises thereby alleged to be leased, together with the said Bank Building thereon to the said defendant Schleier, and each of said instruments and transactions were and are absolutely null and void for all purposes, and ultra vires of the acts of the Congress of the United States in respect to the powers of national banks to acquire, own, and hold real estate, or to be and become indebted in the exercise of corporate powers, and that no title or right, legal or equitable, ever was or could be ac-
36 quired under the same or either thereof, by the said defendant Schleier to the said Bank Building and the appurtenances thereunto belonging or any part thereof.

4th. Your orator further prays for a full accounting in the premises.

5th. Your orator further prays for a decree declaring and adjudging that whatever shall be found to be due upon said accounting to the estate of said defendant national banking association, and to this plaintiff as the receiver thereof, shall be a first and prior lien and charge upon the said bank building and premises, viz: Upon the said lots numbered from one (1) to four (4) both inclusive, in said block numbered seventy-five (75) in the East Division of the city of Denver, and the said Bank Building and improvements thereon, and that said charge and first lien be enforced by a sale of the said lands and bank building.

6th. Your orator prays for such other and further relief as to the court shall seem meet and proper, and for costs of suit.

CRANSTON, PITKIN, & MOORE,
H. M. ORAHOOD,
J. H. BROWN,
WATTERS AND KENDALL,
Solicitors for complainant.

H. M. ORAHOOD and
JAMES H. BROWN,
Of Counsel.

State of Colorado,
County of Arapahoe—ss.

Earl M. Cranston, being duly sworn, on his oath deposes and says: That he is the complainant in the above en-
37 titled suit; and that he is the receiver of the People's National Bank, duly qualified and acting as such; that he has read the foregoing bill of complaint and knows the contents thereof, and that the same is true of his own knowledge in substance and in fact, except as to the matters and things therein stated on information and belief, and as to those he believes it to be true.

EARL M. CRANSTON.

Subscribed and sworn to before me this twentieth day of December, A. D. 1900.

My commission will expire April 11, 1904.

[Seal] CLARENCE F. POWELL,
Notary Public.

Indorsed: 4116. Earl M. Cranston, Receiver, vs. George C. Schleier. Bill of Complaint. Filed Dec. 22, 1900. Robert Bailey, Clerk. Cranston, Pitkin, and Moore, H. M. Orahood, J. H. Brown, Watters & Kendall, Solicitors for complainant.

United States of America,
District of Colorado—ss.

In the United States Circuit Court for the District of Colorado.

The President of the United States of America to George C. Schleier, and the Peoples National Bank of Denver, Colorado, a national banking association—Greeting:

You and each of you are hereby commanded, that you
38 appear before the Judges of the United States Circuit Court, for the District of Colorado, at the City of Denver, in said District, on the first Monday in February next, (it being the 4th day of February, A. D. 1901) to answer the bill of complaint of Earl M. Cranston, Receiver of The Peoples National Bank of Denver, Colorado, a national banking asso-

ciation, this day filed in the office of the clerk of said court, in said city of Denver, then and there to receive and abide by such judgment and decree as shall then or thereafter be had upon said bill of complaint, upon pain of judgment being pronounced against you by default, and a decree had and entered accordingly.

To the Marshal of the District of Colorado to execute, and make due return.

Witness, The Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America, and the seal of the said Circuit Court, at the City of Denver aforesaid, this 26th day of February, in the year of our Lord, one thousand nine hundred, and of the Independence of the United States the 125th year.

[Seal] ROBERT BAILEY, Clerk.

Memorandum.

The above named defendants [—] hereby notified that unless they and each of them shall enter their appearance in the office of the clerk of said court, at the City of Denver aforesaid, on or before the day to which the above writ is returnable, the complainant's bill will be taken against them as confessed, and a decree entered accordingly.

ROBERT BAILEY, Clerk.

39 Marshal's Return.

United States of America,
District of Colorado—ss.

Denver, Jan. 3rd, 1901.

I have duly executed the within writ, by delivering to George C. Scheleier, and each of them, personally, a true copy of the within writ, at the place and time as follows, to wit: As to George C. Schleier on the 3rd day of January, A. D. 1901, at Denver, in Arapahoe County.

After diligent search I have been unable to locate any officer of The Peoples National Bank of Denver.

This writ therefore returned served as the law directs, this 3rd day of January, A. D. 1901.

DEWEY C. BAILEY, Marshal.
By Edwin H. Davis, Deputy Marshal.

Indorsed: No. 4116. (1276) United States Circuit Court, for the District of Colorado. In Chancery. Earl M. Cranston, Receiver, vs. George C. Schleier. Subpoena. Returnable to rule day, first Monday in February, A. D. 1901. Robert Bailey,

Clerk. Filed Jan. 4, 1901. Robert Bailey, Clerk. Cranston, Pitkin, and Moore; H. M. Orahood, J. H. Brown, Watters and Kendall, complainant's Sol'rs.

United States of America,
District of Colorado—ss.

40 In the United States Circuit Court for the District of Colorado.

The President of the United States of America, to The Peoples National Bank of Denver, Impleaded with George C. Schleier—Greeting:

You are hereby commanded, as you have heretofore been commanded, that you appear before the Judges of the United States Circuit Court for the District of Colorado, at the city of Denver, in said district, on the first Monday in March next, (it being the 4th day of March, A. D. 1901) to answer the bill of complaint of Earl M. Cranston as receiver of the Peoples National Bank of Denver, filed in the office of the clerk of said court in said city of Denver, on the 22d day of December, 1900, then and there to receive and abide by such judgment and decree as shall then or thereafter be had upon said bill of complaint, upon pain of judgment being pronounced against you by default, and a decree had and entered accordingly.

To the Marshal of the District of Colorado to execute, and make due return.

Witness, The Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America, and the seal of the said Circuit Court, at the City of Denver, aforesaid, this 30th day of January in the year of our Lord, one thousand nine hundred and one, and of the Independence of the United States the 125th year.

[Seal] ROBERT BAILEY, Clerk.

41 Memorandum.

The above named defendant is hereby notified that unless it shall enter its appearance in the office of the clerk of said court, at the City of Denver aforesaid, on or before the day to which the above writ is returnable, the complainant's bill will be taken against it as confessed, and a decree entered accordingly. ROBERT BAILEY, Clerk.

Marshal's Return.

United States of America,
District of Colorado—ss.

Denver, Jan. 20, 1901.

I have duly executed the within writ, by delivering to James H. Clemes as cashier of the Peoples Nat. Bank, personally, a

true copy of the within writ, on the 30 day of Jan'y, A. D. 1901, at Denver, in Arapahoe County.

This writ therefore returned served as the law directs, this 30 day of Jan'y, A. D. 1901.

DEWEY C. BAILEY, Marshal.
By Melvin Edwards, Deputy Marshal.

Indorsed: No. 4116 (1291). United States Circuit Court for the District of Colorado. In Chancery. Earl M. Cranston, as receiver &c., vs. George C. Schleier et al. Alias Subpoena. Returnable to rule day, first Monday in March, A. D. 1901. Robert Bailey, Clerk. Filed Jan. 31, 1901. Robert Bailey, Clerk. James H. Brown, of Denver, Complt's Sol'r.

42

Monday, February 4th, A. D. 1901.

Before the Clerk.

Earl M. Cranston as Receiver of The Peoples National Bank, of Denver, Colorado,

4116 vs. In Chancery.

George C. Schleier and The Peoples National Bank of Denver, Colorado.

Bill to Set Aside Lease and for an Accounting.

At this day, come Robert D. Thompson, Esquire, Gustave C. Bartels, Esquire, and James H. Blood, Esquire, solicitors of record of this court and enter their appearance herein for and on behalf of the respondent George C. Schleier.

United States of America,
State of Colorado—ss.

No. 4116.

In the Circuit Court of the United States for the District of Colorado.

Earl M. Cranston as Receiver of The People's National Bank of Denver, Colorado, a National Banking Association, Plaintiff,

versus In Equity.

George C. Schleier, and The People's National Bank of Denver, Colorado, a National Banking Association, Defendants.

43 Demurrer of the Above Named Defendant George C. Schleier to the Bill of Complaint of the Above Named Plaintiff.

This defendant by protestation, not confessing or acknowledging all or any of the matters or things in the said bill of

complaint contained to be true, in such manner and form as the same are therein set forth and alleged, doth demur to said bill and for causes of demurrer showeth:

1st. That the said bill doth not contain any matter of equity whereon this court can ground any decree or give to the plaintiff any relief against this defendant.

2nd. That the said bill doth show that the People's Savings Bank, the only creditor of said People's National Bank mentioned in complainant's bill, and also the stockholders of the said National Bank, and the United States Comptroller on whose behalf the complainant brings this bill, have each and all been guilty of such laches as to bar complainant in a court of equity from obtaining any relief herein against this defendant; it appearing from said bill of complaint that between July 19th and August 21st, 1893, said National Bank and its assets, among which were the leasehold interest and bank building mentioned in complainant's bill, were in the hands of the United States Comptroller by and through his receiver, J. B. Lazear, who, with the consent of said stockholders of said National Bank, and with the consent of said Savings
44 Bank, acquiesced in the said lease by taking no steps to invalidate the same, and by restoring said lease and bank building to said National Bank on the discharge of said Lazear as such receiver on August 21st, 1893; said bill also showing that in 1897 public notice was given for several months by the said People's National Bank of its intention to surrender the said bank building to the defendant George C. Schleier, and that no protest or objection of any kind was made thereto by the said Savings Bank or by any of the stockholders of said National Bank, or by the said United States Comptroller; said bill also showing that said lease complained of was duly recorded on, to wit, September 21, 1889, in the records of Arapahoe County, Colorado, and said bill nowhere denying that said National Bank reported the existence of this lease, and of its ownership of the said bank building, to the said United States Comptroller, and nowhere denying that such lease and bank building were mentioned as resources five times each year in the public statements required of the said National Bank by the United States National Bank Act; and said bill also showing that since December 20th, 1899, said People's National Bank has been in the hands of the said United States Comptroller by and through the complainant herein, and that until the bringing of this suit no attack has been made upon the validity of said lease, or the construction or ownership of the said bank building by the said National

Bank, or the surrender of said lease and building to this
45 defendant; said bill also showing that in consideration of the surrender of said lease and building to this defendant, this defendant on October 30th, 1897, by an instrument duly recorded November 7th, 1897, in the records of Arapahoe County, released said National Bank from past and future demands which this defendant then had and asserted against said National Bank.

Wherefore, and for divers other good causes of demurrer appearing on said bill, this defendant doth demur thereto. And he prays the judgment of this Honorable Court whether he shall be compelled to make any answer to the said bill, and he humbly prays to be hence dismissed with his reasonable costs in this behalf expended.

R. D. THOMPSON,
G. C. BARTELS, and
J. H. BLOOD,
Counsel for defendant George C. Schleier.

We hereby certify that the foregoing demurrer is in our opinion well founded in point of law.

R. D. THOMPSON,
G. C. BARTELS, and
J. H. BLOOD,
Counsel for defendant George C. Schleier.

State of Colorado,
County of Arapahoe—ss.

George C. Schleier being first duly sworn deposes and
46 says: I am one of the defendants above named, and the foregoing demurrer is not interposed for delay.

GEORGE C. SCHLEIER.

Subscribed and sworn to before me this 2nd day of March, A. D. 1901.

My commission expires Dec. 20, 1902.

[Seal] CHARLES J. BLAKENEY.
Notary Public.

Indorsed: No. 4116. United States Circuit Court. Earl M. Cranston, etc., versus George C. Schleier et al. Demurrer of Defendant Geo. C. Schleier to Bill of Complaint. Filed Mar. 2, 1901. Robert Bailey, Clerk. R. D. Thompson, Bartels and Blood, Solicitors for respondent.

66th Day. Monday, March 4th, A. D. 1901.

Present: The Honorable Moses Hallett, District Judge, and other officers as noted on the sixth day of November last past.

Earl M. Cranston as Receiver of The Peoples National Bank of Denver,

4116 vs. In Chancery.

George C. Schleier and The Peoples National Bank of Denver.

Bill to Set Aside a Lease and for an Accounting.

At this day come R. D. Thompson, Esquire, G. C. Bartels, Esquire, and James H. Blood, Esquire, solicitors of record of this court, and enter their appearance herein, for and on account of the respondent The Peoples National Bank of Denver.

47 United States of America,
State of Colorado—ss.

No. 4116.

In the Circuit Court of the United States, for the District of Colorado.

Earl M. Cranston, as Receiver of The People's National Bank of Denver, Colorado, a National banking association, Plaintiff,

vs. In Equity.

George C. Schleier and The People's National Bank of Denver, Colorado, a National banking association, Defendants.

The demurrer of the above named defendant, The People's National Bank of Denver, Colorado, a National Banking Association, to the bill of complaint of the above named plaintiff.

This defendant, by protestation, not confessing or acknowledging all or any of the matters and things in the said plaintiff's bill of complaint to be true in such manner and form as the same are therein set forth and alleged, doth demur thereto, and for causes of demurrer showeth:

1. That the said plaintiff has not in and by the said bill made or stated any such cause as doth or ought to entitle him to any such discovery or relief as is thereby sought and prayed for from or against this defendant.

2. That the said bill doth not contain any matter of
48 equity wherein this court can ground any decree or give to the plaintiff any relief against this defendant.

3. That it appears in and by the said bill of complaint that more than eleven years have elapsed since the alleged cause of complaint in said bill set out accrued, and that the plaintiff and those whom he represents have each and all been guilty of such laches as to bar plaintiff and those whom he represents in a court of equity from obtaining any relief against this defendant.

4. That it appears in and by the said bill of complaint that the alleged cause of complaint therein set out is so stale, and that so long a time has elapsed since the matters and things complained of took place and that plaintiff has been guilty of such laches, that it would be contrary to equity and good conscience for this court to take cognizance thereof or to enforce any further or other answer thereto.

Wherefore, and for diverse other good causes of demurrer appearing in the said bill, this defendant doth demur thereto and humbly demand the judgment of this court whether it shall be compelled to make any further or other answer to the said bill, and prays to be hence dismissed in this behalf most wrongfully sustained.

G. C. BARTELS,
JAMES H. BLOOD,
R. D. THOMPSON,
Solicitors for the defendant, The People's National Bank of Denver.

49 We hereby certify that in our opinion, the foregoing demurrer is well founded in point of law.

G. C. BARTELS,
JAMES H. BLOOD,
R. D. THOMPSON,
Of counsel for defendant, The Peoples National Bank of Denver.

State (District) of Colorado,
County of Arapahoe—ss.

Gustave C. Bartels, being first duly sworn, makes solemn oath and says; that he is one of the attorneys of the defendant, The Peoples National Bank of Denver, Colorado, a National Banking Association, and that the foregoing demurrer is not filed for delay.

This affidavit is made by the said attorney because none of the officers of the said bank are now within the district or State of Colorado.

GUSTAVE C. BARTELS.

Subscribed and sworn to before me this 1st day of April, A. D. 1901.

My notarial commission expires January 20th, 1903.

[Seal]

EDITH L. HARRIS,
Notary Public.

Indorsed: No. 4116. In Equity. United States Circuit Court District of Colorado. Earl M. Cranston, as receiver &c., Plaintiff, vs. George C. Schleier et al., defendants. Demurrer of The Peoples National Bank of Denver, to Bill of Complaint. Filed Apr. 1, 1901. Robert Bailey, Clerk. G. C. Bar-
50 tels, J. H. Blood, and R. D. Thompson, Solicitors for The Peoples National Bank.

14th Day. Friday, May 24th, A. D. 1901.

Present: The Honorable Moses Hallett, District Judge, and The Honorable John A. Riner, District Judge of the District of Wyoming assigned to the District of Colorado, and other officers as noted on the seventh instant.

And before the Honorable Moses Hallett, District Judge, the following proceedings were had:

Earl M. Cranston as Receiver of The Peoples National Bank of Denver, Colorado,
4116 vs. In Chancery.
George C. Schleier and The Peoples National Bank of Denver, Colorado.

Bill to Set Aside a Lease and for an Accounting.

This cause coming on now to be heard, the complainant appearing by H. M. Orahood, Esquire, his solicitor, and the respondents appearing by R. D. Thompson, Esquire, their solicitor.

Whereupon on motion of the respondents, the complainant not opposing, it is ordered by the court that this cause be and the same is hereby continued to the next term of the court.

United States of America,
District of Colorado—ss.

In the Circuit Court of the United States for the Eighth Judicial Circuit in and for the District of Colorado.

51 Earl M. Cranston, as Receiver of The People's National Bank of Denver, Colorado, a national banking Association, Plaintiff,
No. 4116. vs. In Equity.
George C. Schleier and The Peoples National Bank of Denver, Colorado, a national banking association, Defendants.

To the Honorable Judges of the Circuit Court of the United States for the District of Colorado:

Edwin F. Brown, as the receiver of The People's National Bank of Denver, Colorado, a national banking association, as

successor to Earl M. Cranston, as the receiver of said The People's National Bank, by leave of court in that behalf first had and obtained, brings this his amendment of his bill of complaint against the said defendants George C. Schleier and The People's National Bank of Denver, Colorado, a national banking association.

And thereupon your orator complains and makes amendment of his said bill of complaint herein, as follows:

First. In lieu of paragraphs of said complaint numbered respectively "15" (fifteen) and "16" (sixteen), the following allegations, viz:

"15. That on or about the 19th day of July, A. D. 1893, the said defendant banking association, being unable to pay its depositors in the due course of business, in accordance
52 with the provisions of said National Bank Act in such case made and provided, the Honorable Comptroller of the Currency of the United States took possession thereof, under the said National Bank Act, and appointed one J. B. Lazear as the receiver thereof, and he, the said J. B. Lazear, as such receiver, remained in possession of said bank, and its assets and affairs, until on or about the 21st day of August, A. D. 1893, when, upon the agreement of said bank to make a voluntary assessment of twenty (20) per cent, to restore the impairment of its share capital, the said receiver was discharged, and the directors and officers of the said bank, and the said bank, were restored to, and at all times thereafter hereinafter alleged, until the appointment of this plaintiff, were in the possession, control, and management of its said business and affairs.

And your orator avers, upon his information and belief, and so charges the fact to be, that at all the times hereinafter mentioned, from and after the said 19th day of July, A. D. 1893, the said defendant banking association was, and still is, insolvent.

"16. That about the times last aforesaid, viz. on and about and subsequent to the taking of possession of the said bank by the Honorable Comptroller of the Currency of the United States as aforesaid, the assets, business and affairs of the said defendant National Bank were very much involved, mixed, and commingled with those of said The People's Savings Bank, with whom it was located, in doing banking business ,in
53 the same banking room in said Bank Building; and that such commingled, mixed, and involved condition of the assets, business, and affairs of said defendant National Bank and said The People's Savings Bank continued until finally settled on or about the 20th day of November, A. D. 1899, by

the rendition of a final judgment in favor of said Fermor J. Spencer, Esquire, as the assignee of said The People's Savings Bank, as hereinafter alleged."

Second. By adding and inserting in said bill of complaint herein, between paragraphs numbered "16" (sixteen) as amended hereby, and paragraph numbered "17" (seventeen), the following paragraphs:

"16a. That on or about the 29th day of June, A. D. 1895, the said The People's Savings Bank, by reason of the said mingled, mixed and involved condition of its assets, business and affairs with those of the said defendant National Bank, became further unable to proceed with the conduct of its savings banking business, and then and there made a general assignment of all its assets and estate to one Fermor J. Spencer, as assignee thereof, who was, and at all the times hereinafter mentioned still is, in the possession, control and management of the assets, business and affairs of said The People's Savings Bank, in the administration of the said assignment and said assigned estate.

"16b. That at all the times thereafter, from on or about the 29th day of June, A. D. 1895, when the said Spencer, as assignee, was appointed, and the said Savings Bank made the said assignment, until on or about the month of Novem-
54 ber, A. D. 1896, the said defendant National Bank admitted that it was the debtor of the said People's Savings Bank, and the said National Bank co-operated with the said Spencer, as assignee of said Savings Bank, in making a settlement and in adjusting the relations, business, assets and affairs of the said institutions; but about said last mentioned date, viz: on or about the month of November, A. D. 1896, the said defendant People's National Bank and its officers and directors commenced to deny, and at all times thereafter, until the rendition of said judgment, continued to deny, all further liability, of every name, nature, and description whatsoever, from it, the said defendant National Bank, to the estate of said Savings Bank and to the said Spencer, as assignee thereof.

"16c. That thereafter, and in the month of January, A. D. 1897, the said defendant National Bank commenced to take steps for placing the said defendant National Bank in course of voluntary liquidation and for a surrender of its charter; and thereafter and on or about the 27th day of April, A. D. 1897, the stockholders of said defendant National Bank, in alleged compliance and pursuance of the said National Bank Act, held a meeting and determined upon a voluntary liquidation of the said bank and a dissolution and surrender of its charter; and thereafter, in alleged pursuance of the provisions

of the National Bank Act in such case made and provided, published a notice of said defendant bank's intention to go into liquidation, and for the presentation of claims against
55 the said bank, the last day of which expired on or about the 27th of June, A. D. 1897.

16d. That on or about the 26th day of June, A. D. 1897, and prior to the expiration of the time for the presentation of claims, and when the said bank would, if all its debts have been paid, have been entitled to become dissolved and to have surrendered its charter the said defendant bank having failed, neglected and refused to make full settlement, adjustment of, and accounting for, a very large amount of the assets, property, and estate of the said Savings Bank, the said Fermor J. Spencer, as assignee of said People's Savings Bank, threatened to commence, and did, to the extent of serving a summons, commence an action against the said National Bank, and at the same time served notice of the said claims and demands of him, the said Spencer, as assignee of the said Savings Bank, against the said defendant National Bank, upon the Honorable Comptroller of the Currency of the United States; that thereupon, as a result of the action last aforesaid of the said Spencer, as assignee, the said defendant National Bank entered into an agreement with the said Spencer, as assignee, which was and is in words and figures as follows, to wit:

This agreement made and entered into this 2nd day of July, A. D. 1897, by and between Fermor J. Spencer, Assignee of the Peoples Savings Bank, party of the first part, and the Peoples National Bank of Denver, party of the second part:

Witnesseth: That whereas, certain contentions and disputes have arisen in regard to the relationship of the said two
56 banks, and whereas, the said party of the first part has commenced a suit against the said party of the second part by serving summons on the 26th day of June, 1897, for the purpose of effecting a settlement of said contentions and disputes; and

Whereas, it seems advisable to both parties thereto that further steps in said suit should not be taken before January 1st, 1898, to give time for better understanding of the matter;

Now, therefore, it is hereby agreed that the party of the first part shall refrain from taking any further steps in said suit until January 1st, 1898, without prejudice of any nature or character whatsoever by reason of such delay; and the said party of the second part, in consideration of the delay in filing said complaint in said suit, hereby agrees that it will take no further action of any kind or nature whatsoever to the prejudice

of the said party of the first part in the above named suit, or any further action whatsoever for the surrender of its charter as a national bank, or the disposal of its property to the prejudice of the said party of the first part.

In witness whereof, the said parties have hereunto set their hands the day and years first above written.

(Signed) F. J. SPENCER, Assignee,
The Peoples Savings Bank.
THE PEOPLES NATIONAL BANK,
By M. J. Lawrence, President.
By D. D. Muir, Vice-Pt.

Wherefore, your orator prays, as he has before prayed in his original bill of complaint, and forasmuch as he is without any adequate remedy at law in the premises, that the said defendant may be compelled to answer all and singular the premises in the bill of complaint herein contained, and
57 the amendments hereby made thereto, but not under oath, the answer under oath of the said defendants, and each of them, being hereby expressly waived.

2nd. Your orator, upon final hearing, further prays for a decree declaring and adjudging the said alleged pretended lease purporting to have been made between the said National Banking association The People's National Bank of Denver, Colorado, and said defendant George C. Schleier, dated on or about September 12th, A. D. 1889, and recorded on or about September 21st, A. D. 1889, in book 547 at page 1 and following pages of the records in the office of the clerk and recorder of said Arapahoe County, State of Colorado, and also the said alleged pretended instruments of writing bearing date on or about October 30th, A. D. 1897, and recorded the 8th day of November, A. D. 1897, in book 1211, at pages 98 and 100 thereof, in the office of the clerk and recorder of said Arapahoe County, purporting to cancel said alleged pretended lease and yield up and surrender the same and the premises thereby alleged to be leased, together with the said Bank Building thereon, to the said defendant Schleier and each of said instruments and transactions, were and are absolutely null and void for all purposes, and ultra vires of the acts of the Congress of the United States in respect to the powers of national banks to acquire, own, and hold real estate, or to be and become indebted in the exercise of corporate powers, and that no title or right, legal or equitable, ever was or could be acquired under the same, or
58 either thereof, by the said defendant Schleier to the said Bank Building and the appurtenances thereunto belonging, or any part thereof.

3rd. Your orator further prays for a full accounting in the premises.

4th. Your orator further prays for a decree declaring and adjudging that whatever shall be found to be due upon said accounting to the estate of said defendant national banking association and to this plaintiff, as the receiver thereof, shall be a first and prior lien and charge upon the said Bank Building and premises, viz: Upon the said lots numbered from one (1) to four (4) both inclusive, in said block numbered seventy-five (75) in the East Division of the City of Denver, and the said Bank Building and improvements thereof, and that the said charge and first lien be enforced by a sale of the said lands and Bank Building.

5th. Your orator prays for such other and further relief as to the court shall seem meet and proper, and for costs of suit.

JAMES H. BROWN,
H. M. ORAHOOD,
WATTERS and KENDALL,
CRANSTON, PITKIN, and MOORE,
Solicitors for complainant.

State of Colorado,
County of Arapahoe—ss.

H. M. Orahood, being first duly sworn, on his oath deposes and says: That he is one of the solicitors for the complainant in the above entitled suit; that he is familiar with the facts stated in the above and foregoing amendments to the
59 complaint herein, and makes this verification for the foregoing reasons; that he has read the foregoing amendments to the bill of complaint herein, and knows the contents thereof, and that the same are true of his own knowledge in substance and in fact, except as to those matters and things therein stated on information and belief, and as to those matters he believes it to be true.

H. M. ORAHOOD.

Subscribed and sworn to before me this thirty-first day of October, A. D. 1901. My notarial commission will expire Nov. 12th, 1904.

WILLIAM A. REEF, Notary Public.

Received copy of above this 31st day of October, A. D. 1901.
[Seal] R. D. THOMPSON, F. P. N.

Indorsed: No. 4116. In the Supreme Court of The United States for The District of Colorado. Earl M. Cranston as Receiver of The People's National Bank, plaintiff vs. George C. Schleier et al., defendant. Amendments to Complaint. Filed

Nov. 2, 1901. Robert Bailey, Clerk. James H. Brown and Andrew W. Gillette, Attorneys and Counsellors, Rooms 815 to 823 Cooper Building, Denver.

First Day, November Term Tuesday, November 5th, A. D. 1901.

Pleas in the United States Circuit Court for the District of Colorado, at a term thereof, begun and held at the
60 United States Court House at Denver on the first Tuesday (it being the fifth day) of November in the year of our Lord, one thousand nine hundred and one.

Present: The Honorable John A. Riner, District Judge of the District of Wyoming, assigned to the District of Colorado. Earl M. Cranston, Esquire, District Attorney. Dewey C. Bailey, Esquire, Marshal. Robert Bailey, Esquire, Clerk.

Earl M. Cranston, Receiver of the Peoples' National Bank, of Denver,

4116. vs. In Equity.

George C. Schleier and the Peoples National Bank of Denver.

Bill to Set Aside a Lease, for an Accounting, and Other Relief.

This cause coming on now to be heard, James H. Brown, Esquire, appearing as solicitor for the complainant, and R. D. Thompson, Esquire, appearing as solicitor for the respondents. And it appearing to the court that Earl M. Cranston has resigned his office of receiver of the People's National Bank of Denver, and that Edwin F. Brown has been duly appointed, and has qualified, and is now acting as receiver of the People's National Bank of Denver, on motion of complainant, and pursuant to a written stipulation thereto herein filed.

It is ordered, adjudged, and decreed by the court that Edwin F. Brown, receiver of The People's National Bank of Denver be and he is hereby substituted as complainant in this cause in the place and stead of Earl M. Cranston, receiver etc.

And it is further ordered by the court, on motion of complainant, and pursuant to a written stipulation thereto herein filed, that the complainant may file herein amendments to his bill of complaint instanter, and that the demurrer here-
61 tofore filed to the bill of complaint shall stand and be taken to be a demurrer to the bill of complaint as amended.

18th Day. Monday, December 2d, A. D. 1901.

Present: The Honorable Moses Hallett, District Judge, and the Honorable John A. Riner, District Judge of the District of Wyoming, assigned to the District of Colorado. And before the Honorable John A. Riner, District Judge of the District of Wyoming, assigned to the District of Colorado, the following proceeding was had.

Edwin F. Brown as Receiver, of the Peoples National Bank of Denver, Colorado.
4116. vs. In Chancery.
George C. Schleier and The Peoples National Bank of Denver, Colorado.

Bill to Set Aside a Lease and for an Accounting.

This cause coming on now to be heard upon the separate demurrers of the respondents to the bill of complaint herein, James H. Brown, Esquire, appearing as solicitor for the complainant and R. D. Thompson Esquire, appearing as solicitor for the respondent Schleier, and J. M. Waldron, Esquire, appearing as solicitor for the respondent The Peoples National Bank of Denver, and is argued by counsel to the hour of adjournment.

19th Day. Tuesday, December 3rd, A. D. 1901.

Present: The Honorable Moses Hallett, District Judge, and the Honorable John A. Riner, District Judge of the District of Wyoming assigned to the District of Colorado, and other officers as noted on the 5th day of November last past. And before the Honorable John A. Riner, District Judge of the district of Wyoming, assigned to the district of Colorado, the following proceeding was had:

62 Edwin F. Brown, as Receiver, etc.,
4116. vs. In Chancery.
George C. Schleier et al.

Bill to set Aside a Lease and for an Accounting.

This cause now coming on to be further heard upon the separate demurrers of the respondents to the bill of complaint herein, James H. Brown, Esquire, appearing as solicitor for the complainant, and R. D. Thompson, Esquire, appearing as solicitor for the respondent Schleier, and J. M. Waldron, Esquire, appearing as solicitor for the respondent The Peoples National Bank of Denver, and is argued by counsel to the hour of adjournment.

20th Day. Wednesday, December 4th, A. D. 1901.

Present: The Honorable Moses Hallett, District Judge, and the Honorable John A. Riner, District Judge of the District of Wyoming, assigned to the District of Colorado, and other officers as noted on the 5th day of November last past. And before the Honorable John A. Riner, District Judge of the District of Wyoming, assigned to the District of Colorado, the following proceedings were had:

Edwin F. Brown, Receiver, etc.,
4116. vs. In Chancery.
George C. Schleier et al.

Bill to Set Aside a Lease, and for an Accounting.

This cause coming on now to be further heard upon the separate demurrers of the respondents to the bill of complaint herein, James H. Brown, Esquire, appearing as solicitor for the complainant, and R. D. Thompson, Esquire, appearing as solicitor for the respondent Schleier, and John M. Waldron, Esquire, appearing as solicitor for the respondent The
63 Peoples National Bank, and is argued by counsel, and by the court taken under advisement.

38th Day. Monday, December 30th, A. D. 1901.

Present: The Honorable Moses Hallett, District Judge, and The Honorable John A. Riner, District Judge of the District of Wyoming, assigned to the District of Colorado.

And before the Honorable John A. Riner, District Judge of the District of Wyoming, assigned to the District of Colorado, the following proceedings were had:

Edwin F. Brown, Receiver, etc.,
4116. vs. In Chancery.
George C. Schleier et al.

Bill to Set Aside Lease and for an Accounting.

This cause came on to be heard at this term, upon the demurrers of defendants to the bill of complaint herein, and was argued by counsel, and thereupon, upon consideration thereof, it is now

Ordered, adjudged, and decree by the court that the bill of complaint herein be and the same is hereby dismissed at the complainant's cost.

64 United States of America,
District of Colorado—ss.

In the Circuit Court of the United States for the Eighth Judicial Circuit in and for the District of Colorado.

Edwin F. Brown, as Receiver of The People's National Bank of Denver, Colorado, a National Banking *Association*, Plaintiff,

No. 4116. vs. In Equity.

George C. Schleier, and The People's National Bank of Denver, Colorado, a National Banking Association, Defendants.

Motion for Leave to File Amended Bill of Complaint.

Now comes the said plaintiff, and moves this Honorable Court for an order permitting the filing of the amended bill of complaint tendered herewith in the above entitled cause, notwithstanding any order or decree heretofore made herein, sustaining the demurrer of the said defendants, and ordering plaintiff's complaint, as amended, to be finally dismissed, and as grounds therefor avers:

That heretofore, and in the month of December last past, the Honorable John A. Riner, United States District Judge of this Circuit in and for the District of Wyoming, having theretofore heard the argument of the said defendant's demurrer to plaintiff's complaint as amended, made an order sus-
65 taining said demurrer, and ordering the said plaintiff's complaint, as amended, to be finally dismissed, for the reasons stated in a memorandum opinion, a copy of which was filed in the clerk's office of this Honorable Court on December 30th, A. D. 1901.

That the said Judge, at the time of rendering said opinion and making said order, was sitting in this Honorable Court in this cause at the said city of Denver, in said district of Colorado, and that said plaintiff, who was then and there represented by one of his counsel, H. M. Orahood, Esquire, then and there immediately after the delivering of said opinion, at once asked for leave of this Honorable Court as on the part of said plaintiff, to amend his bill of complaint so as to overcome as far as possible, the points of fact in which it was by said opinion found to be defective so as to protect and enforce the rights of plaintiff in this cause, and also requested that the entry of final order or decree dismissing said plaintiff's said bill, be withheld until plaintiff's counsel could have an opportunity to obtain a copy of said opinion and prepare the amendments to his said complaint; but that, as the said Orahood remembers, the said Honorable Judge inquired whether the amendments were then ready, and stated that he

expected to leave Denver that same day; that this Honorable Court, and the Judge thereof, this plaintiff not then being able to secure a copy of said opinion so as to present said
66 amendments to his complaint herein, then and there refused to abstain from entering the order or decree finally dismissing said cause, and then and there refused to grant such permission, and then and there, over the objection and exception of this plaintiff and his said counsel, entered said final order and decree, dismissing this action, and before this plaintiff and his counsel could obtain a copy of the said opinion and prepare said amendments to his said bill, viz: on the afternoon of the same day, to-wit, December 30th, A. D. 1901, aforesaid, left the said city and district of Colorado for the city of Cheyenne, in the State of Wyoming, and since that time has not been within the said district of Colorado, or sitting in said court, until this present week, commencing January 27th last past, which was the first opportunity that this plaintiff has had to serve notice of and bring up his said application for leave to file his said amended bill of compaint herein.

That this action is one whereby plaintiff, as the receiver of said defendant, the said People's National Bank, seeks to enforce a judgment for over four hundred and seventy-five thousand dollars ($475,000), recovered against said defendant National Bank, in favor of Fermor J. Spencer, Esquire, as the assignee of The People's Savings Bank of Denver, Colorado, which said Savings Bank is indebted to a large number of depositors, who had large and small deposits therein on and long prior to its failure in June, A. D. 1895, as is averred in the plaintiff's original complaint as amended, and the
67 amended complaint herein, herewith tendered for filing; that the action is a very important one, not only with regard to the large amount involved, but the number of persons concerned and affected; that it is complicated and involves a large number of important questions of law and intricate details of fact. That plaintiff's counsel have in good faith at all times made their very best endeavors to present all the pertinent facts required to make a case without unnecessity prolixity, and that since the argument of the said demurrer, they are of the opinion—but without conceding the plaintiff's complaint herein, as amended, to be insufficient, notwithstanding the sustaining of the demurrer thereto—that abundant caution requires the setting forth of existing facts, the bearing of which upon the cause stated in the original complaint herein was not apparent, which facts put beyond question the sufficiency of the plaintiff's cause of action herein, by meeting the questions of fact argued on the hearing of defendant's demurrer herein, and pointed out in said opinion.

And this plaintiff and his said counsel expressly and specifically state that they are informed, and understand and believe, that the said Honorable Judge did not overrule the said application of plaintiff and enter the said final order of dismissal with any intention of either prejudicing or in any manner depriving this plaintiff of any opportunity to amend
68 his bill of complaint herein, but solely and only because the said Honorable Judge expected to at once leave the city, as he did leave the said city and state, and perhaps not return until after the expiration of this present term of court at which he made said order and handed down said opinion, and at which this application is made.

Plaintiff further avers that the said demurrer and the said opinion and order, and the argument had on said demurrer and the decision thereof, is the first argument upon the case of plaintiff made in his complaint herein, and that, as he is informed and believes the usual practice of this Honorable Court in this district, in cases of this magnitude and character, is to allow any amendment as to any material matters of fact which, as developed in the argument and decision of the first demurrer to the complaint, it is found have been inadvertently or otherwise omitted therefrom, or which are by the court ruled as necessary to be averred, and which can be averred, so as to satisfactorily, clearly, and conclusively present the issues in the cause of action between the parties.

Plaintiff further avers that by the demurrer interposed in this cause, which was sustained as aforesaid, there were only two grounds averred, viz: laches and want of equity, and that neither plaintiff nor any of his counsel had their attention called to the omission of the facts in respect to the existence of any claim or demand on the part of the People's Savings Bank or its depositors, as creditors directly or indi-
69 rectly, of said defendant The People's National Bank, whose liabilities were in existence on and prior to the execution of the said alleged pretended lease by the said defendant Schleier, and the other matter pointed out in the opinion herein, wherein the said plaintiff's complaint appears to be defective, until the said demurrer was argued before this Honorable Court.

Plaintiff further avers that he is suing here in a representative capacity, and was not and is not himself personally advised of all the facts and circumstances, but was and is dependent upon the obtaining of the information from others upon which to base said cause of action sought to be set forth in the complaint herein, and that until the handing down of the said opinion and the sustaining of the demurrer herein, he

was not fully cognizant of the said facts which are set forth in his amended bill of complaint tendered herein.

That unless this amended bill of complaint tendered herewith be permitted to be filed, he verily believes and fears that the said judgment of over four hundred and seventy-five thousand, eight hundred dollars ($475,800) in favor of Fermor J. Spencer, as assignee of said The People's Savings Bank, out of which, as herein and in the said amended bill averred, the several claims and demands of the depositors of said Savings Bank are made payable, can not be enforced, and that irreparable loss, damage, and injury will follow to the es-
70 tate of said People's Savings Bank and to its depositors and creditors, who comprise a large number of persons and a large amount of money.

That the said bill of complaint is amended in such respect as to meet the defects pointed out in the said opinion herein, as to the fact that the parties represented by this plaintiff were creditors of the said defendant National Bank at and long prior to the time of the making of the alleged pretended lease described in the bill, and that stockholders of the said defendant National Bank dissented and objected to the said alleged pretended surrender and conveyance of said defendant Bank's Bank building to said defendant Schleier at the time of and ever since the alleged conveyance thereof, and also in other matters, as will more fully appear by the said amended bill of complaint herewith tendered and made a part of this application.

And plaintiff further avers, that he is advised by his solicitors and counsel in this cause, that the said amended bill of complaint is proper and sufficient in law and equity to meet the defects pointed out by the said opinion, and, in their opinion, presents the same cause of action sought to be set forth in the bill of complaint as amended, of plaintiff herein aforesaid, and that unless this plaintiff be permitted to file his amended bill of complaint herein herewith tendered, great wrong and injustice will be done to a very large number of persons, consisting of mechanics, tradesmen, servants,
71 minors, and others, who were and are depositors and creditors of The People's Savings Bank of Denver, Colorado, whose assignee, Fermor J. Spencer, has a judgment for over four hundred and seventy-five thousand dollars ($475,000) against the said People's National Bank.

Wherefore, this plaintiff respectfully renews his prayer made in the opening of this motion.

H. M. ORAHOOD,
JAS. H. BROWN,
CRANSTON, PITKIN AND MOORE,
WATTERS AND KENDALL,
Solicitors for plaintiff.

State of Colorado,
County of Arapahoe—ss.

Harper M. Orahood, being duly sworn, deposes and says: That he is one of the solicitors and counsel for the said plaintiff in the above entitled cause; that he has heard read the above and foregoing motion and knows the contents thereof, and that the matters and facts therein set forth are true of his own knowledge, except as to those matters therein set forth upon information, opinion, and belief, and as to those matters, he verily believes it to be true.

HARPER M. ORAHOOD.

Subscribed and sworn to before me this 31st day of January, A. D. 1902.

My notarial commission will expire November 12, 1904.

[Seal] WILLIAM A. REEF, Notary Public.

72 Indorsed: No. 4116. In the Circuit Court of the United States for the District of Colorado. Edwin F. Brown, as Receiver etc., plaintiff vs. George C. Schleier et al, defendant. Motion for leave to file Amended Bill of Complaint. Filed Feb. 1, 1902, Robert Bailey, Clerk. James H. Brown, Attorney and Counselor, Rooms 815 to 823 Cooper Building, Denver.

United States of America,
District of Colorado—ss.

In the Circuit Court of the United States for the Eighth Judicial Circuit in and for the District of Colorado.

Edwin F. Brown, as Receiver of The Peoples National Bank of Denver, Colorado, a National Banking Association, Plaintiff,

No. 4116 vs. In Equity.

George C. Schleier and The Peoples National Bank of Denver, Colorado, a National Banking Association Defendants.

Amended Bill of Complaint.

To the Honorable Judges of the Circuit Court of the United States for the District of Colorado:

Edwin F. Brown, as the successor of Earl M. Cranston as the Receiver of The People's National Bank of Denver, Colorado,

a national banking association, as hereinafter alleged, and a citizen of the State of Illinois, brings this, his amended
73 bill, by leave of court first had and obtained, against said The People's National Bank of Denver, Colorado, a national banking association of the city of Denver, Colorado, a citizen of the State of Colorado, and against George C. Schleier, of the city of Denver, Colorado, a citizen of the State of Colorado.

And thereupon your orator complains and says:

1. That the matter and amount involved in this suit exceeds, exclusive of costs, the sum or value of two thousand dollars ($2000) and arises under the laws of the United States, and that this suit is instituted by direction of an officer of the United States, viz., the Honorable Comptroller of the Currency of the Treasury of the United States, and is also for the purpose of winding up the business and affairs of said The People's National Bank of Denver, a national banking association, established under the laws of and the National Bank Act of, the United States.

2. That on or about the 30th day of July, A. D. 1889, the Honorable Comptroller of the Currency of the Treasury of the United States, under and in pursuance of the statutes of the United States and an application made to him thereunder, by an organization certificate bearing date July 1, A. D. 1889, issued his certificate bearing date the 30th day of July, A. D. 1889, authorizing the existence and the commencement of the transaction of business by said defendant, The People's National Bank of Denver, Colorado; and on and after the
74 said date, as hereinafter alleged, there was, and still is existing the said defendant, The People's National Bank of Denver, Colorado, created, organized and existing under and in pursuance of the said Statutes of the United States, providing for the creation of and governing banks, known as and called the "National Bank Act," in pursuance of said articles of association executed under section 5154 of the Revised Statutes of the United States, approved June 22, A. D. 1874, and the subsequent acts of the Congress of the United States in addition to and amendatory thereof (all of which said acts will for convenience and brevity be hereinafter referred to as the "National Bank Act").

3. That in and by its said articles of association and the authority of the provisions of said National Bank Act, said defendant The People's National Bank of Denver, Colorado, was authorized and empowered, and the same did provide:

(a) That the corporate name and title of the said association should be "The People's National Bank of Denver."

(b) That the place where the banking house or office should be located, and its operations of discount and deposit carried on, and its general business conducted, should be in the city of Denver, in the county of Arapahoe aforesaid.

(c) That the capital stock of said association should be three hundred thousand dollars ($300,000), to be divided into shares of one hundred dollars ($100) each.

75 (d) That said association should continue for a period of twenty (20) years from the said date of the execution of its said organization certificate, viz: From July 1, A. D. 1899, unless sooner dissolved.

4. That at all the times hereinafter mentioned, on and after the said first day of July, A. D. 1889, said The People's National Bank of Denver, of the city of Denver, in the County of Arapahoe aforesaid, became and was a national banking association, and as such was authorized and empowered and possessed, under and in pursuance of said National Bank Act, of the following powers and rights:

(a) To have succession for the period of twenty (20) years from said first day of July, A. D. 1889, unless sooner dissolved.

(b) To have, and did have, a fully paid-up capital stock to the amount of three hundred thousand dollars ($300,000) of the par value of one hundred dollars ($100) per share; and,

(c) To transact its usual business as such national banking association at an office or banking house located in the city of Denver, in the county of Arapahoe, aforesaid.

5. That at all times thereafter, hereinafter mentioned, down to and including and for some time after the date of the execution of the alleged pretended contract of lease, entered into between said defendant National Bank and said defendant Schleier, hereinafter set forth at length, the said total aggregate amount of the entire share capital remained and continued unchanged, and during all said time, was for the same said amount of three hundred thousand dollars ($300,000) aforesaid.

76 6. That for the purpose of its said business as such national banking association, said defendant bank was also empowered to make contracts, to purchase, hold, and convey real estate for the following purposes and for no others:

(1st) Such as should be necessary for its, said association's, immediate accommodation in the transaction of its business.

(2nd) Such as should be mortgaged to it in good faith for debts previously contracted.

(3rd) Such as should be conveyed to it in satisfaction of debts previously contracted in the course of its dealings.

(4th) Such as it should purchase at sales under judgments, decrees or mortgages, to be held by such association, or should purchase to secure debts due to it; but should not hold possession of any real estate under mortgage, or the title and possession of any real estate purchased to secure any debts due to it for a longer period than five years.

7. But it was, at all the times herein mentioned, provided by said the National Bank Act, that said defendant association should not at any time be indebted or in any way liable to an amount exceeding the amount of its said capital stock, viz: Said three hundred thousand dollars ($300,000) at such time actually paid in and remaining undiminished by losses or otherwise, except on account of discount of the nature following:

(1st) Notes of circulation.

(2d) Moneys deposited with or collected by said association.

(3d) Bills of exchange or drafts drawn against money actually on deposit to the credit of said association, or due thereto.

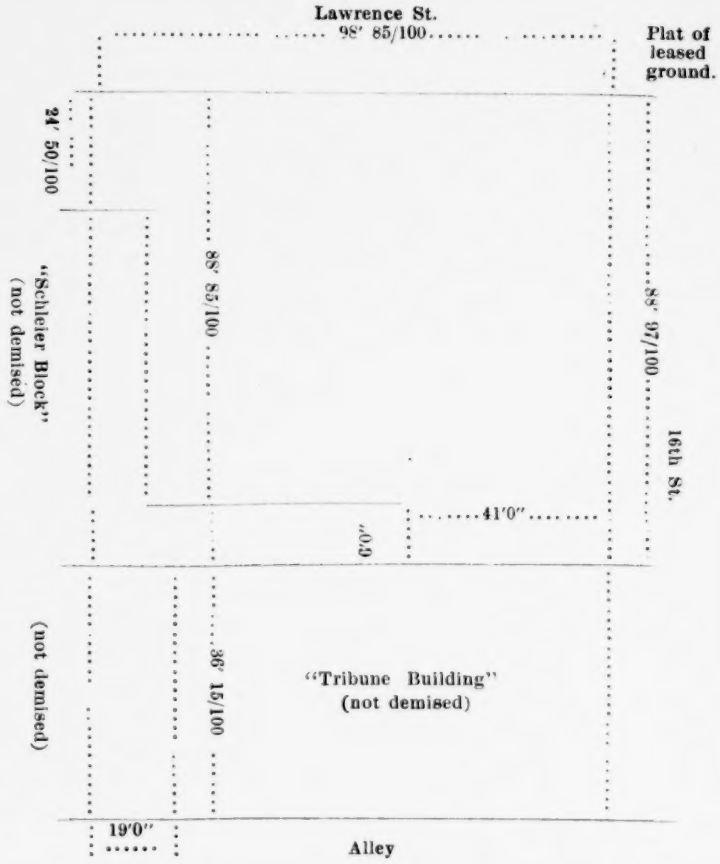
(4th) Liabilities to the stockholders of said associa-
77 tion, for dividends and reserve profits.

8. That it was also, at all the times herein mentioned, provided by said National Bank Act that said defendant "association or any member thereof, should not, during the time it shouldcontinue its banking operations, withdraw, or permit to be withdrawn, either in the form of dividends, or otherwise, any portion of its capital."

9. That at the time of the creation and organization of said national banking association, its banking house and office was located in a store room in a building situated on Arapahoe Street, between Sixteenth and Seventeenth Streets, in said city of Denver, for which it paid rent, and then and there, and at all times thereafter, except as hereinafter alleged, continued to carry on and conduct its said national banking business.

10. That thereafter and during the month of September, A. D. 1889 the said defendant, George C. Schleier, was the owner in fee simple, and in possession of lots numbered one (1), two (2), three (3), and four (4) all in block numbered seventy-five (75) in the East Division of the city of Denver, in the county of Arapahoe, aforesaid, which said property is located at the corner of Lawrence and Sixteenth Streets, in said city of Denver, at a distance of about a block and a half from the said place of business of the said national banking association, situated on Arapahoe Street, as aforesaid.

11. That during said month of September, 1889, and by an instrument in writing bearing date the 12th day of September, A. D. 1889, said national banking association, in violation of, and in contravention of the provisions and prohibitions
78 of said statutes of the United States comprising said National Bank Act and its said corporate powers, assumed to make and execute with the said defendant Schleier, an alleged pretended lease of the said real estate in said Block numbered seventy-five (75) which said pretended lease was recorded on September 21st, 1889, in book 547, at page 1 and the following pages of the records in the office of the Clerk and Recorder of said Arapahoe County, and was and is in words and figures as follows, to-wit:



79 This indenture, made this twelfth day of September, A. D. 1889, between George C. Schleier, of the County of Arapahoe and State of Colorado, as party of the first part, and "The Peoples National Bank of Denver," a banking corporation existing under and by virtue of the Acts of the Congress of the United States as party of the second part,

Witnesseth that the said party of the first part, for and in consideration of the rents, covenants, and agreements hereinafter reserved and contained, to be paid, kept and performed by the said party of the second part, its successors and assigns, has demised and leased to the said party of the second part, all those premises situate, lying, and being in the City of Denver in the County of Arapahoe and State of Colorado, known and described as follows, to wit: Commencing at the

most northerly corner of lot one (1) in block seventy-five (75) in the East Division of the city of Denver; thence southwesterly along Lawrence Street ninety-eight and eighty-five one hundredths (98.85) feet; thence along the northerly wall of the building known as the "Schleier Block," and of the office and boiler room addition thereto, upon the outside thereof, one hundred and twenty-five (125) feet to the alley in said block; thence northeasterly along the said alley nineteen (19) feet; thence at right angles in a northwesterly direction thirty-six and fifteen one hundredths (36.15) feet; thence in a northeasterly direction in a straight line to a point on the line of Sixteenth Street, which is eighty-eight and ninety-seven one hundredths (88.97) feet southeasterly from Lawrence Street; thence northwesterly along the line of Sixteenth Street eighty-eight and ninety-seven one hundredths (88-97) feet to the place of beginning, being parts of lots one (1) two (2), three (3), and four (4), in block seventy-five (75) aforesaid; Provided, however, that no part of the realty now occupied by either the so-called "Schleier Block" or the office and boiler room addition thereto, or the old "Tribune Building," is hereby demised or let.

To have and to hold the said above demised premises, unto the said party of the second part, its successors and as-
80 signs, for the term of ninety-nine (99) years from the first day of February, in the year of our Lord one thousand eight hundred and ninety, for and during and until the first day of February in the year of our Lord one thousand nine hundred and eighty-nine.

And the said party of the second part, in consideration of the leasing of the premises aforesaid, covenants and agrees for itself, its successors and assigns, with the said party of the first part, his heirs, personal representatives, and assigns, to pay to the said party of the first part, his heirs or assigns, as rent for the said demised premises the sum of thirteen thousand nine hundred and seventy-five ($13,975.00) dollars for each year during said term of ninety-nine years (99); said sum of thirteen thousand nine hundred and seventy-five ($13975.00) dollars to be paid in twelve equal instalments each year, the first instalment of eleven hundred sixty-four and fifty-eight hundredths ($1164.58) dollars to be paid on or before the fifteenth day of February, A. D. 1890, and then an instalment of eleven hundred sixty-four and fifty-eight hundredths ($1164.58) dollars on or before the fifteenth day of each and every month thereafter during said term.

The said party of the second part, its successors and assigns, in consideration of said letting as aforesaid, covenant and agree with the said party of the first part, his personal representatives heirs and assigns, that they will on or before the first

day of May, A. D. 1890, remove or cause to be removed, at their own cost and expense, the store rooms now situate upon said demised ground and that they will within eighteen months from February first, A. D. 1890, at their own cost and expense, build, erect, and complete a good substantial building, not less than four stories in height, to cost not less than one hundred thousand ($100,000) dollars and to face on both Sixteenth and Lawrence Streets provided that the party of the first part shall give, or cause possession of said premises to be given to the party of the second part on or before the said first day of February, A. D. 1890, and neither rent nor the other covenants of this lease shall be operative against said party of the second part until such possession is given; and provided further, that the time allowed herein for the removal of said store buildings now on said premises, and for the
81 erection of said building as aforesaid, shall be extended for the period of time said possession may be withheld from said party of the second part after February first, A. D. 1890. And it is further agreed and covenanted, that said building and improvements erected or made upon said premises shall at once become a part of the realty, that is to say, of the real estate hereinbefore demised, without any right on the part of any one whomsoever to remove the same or any part thereof, except for the purpose of remodeling, rebuilding, or improving the same.

And the said party of the second part, its successors and assigns, covenant and agree that they will, from time to time, and at all times during the continuance of this lease, keep any and all buildings and improvements which may be erected or made upon said demised premises in good order and repair at their own expense, and further, that, at the expiration of said ninety-nine (99) years, or fifty (50) years thereafter, if the same shall be extended as herein provided, they will peaceably and quietly leave, surrender, and yield up to the said party of the first part, his heirs and assigns the said demised premises, together with any and all buildings and improvements erected and made thereon.

And the said party of the second part, its successors and assigns, covenant and agree with said party of the first part, his heirs and assigns that they will, at their own expense, from time to time, and at all times during the continuance of this lease, insure and and all buildings and improvements to be erected on said premises from casualties by fire, for a sum not less than one-half of the then value of such buildings and improvements. And the said parties hereto agree, that in case of loss or damage by fire, if the same amount to one-fourth of the then value of said building or buildings or more, the said

insurance shall be paid to some trustee to be appointed by a court of competent jurisdiction, upon application of either of the parties hereto, to be held by him for the purpose of reinvesting and applying the same in and to repairing and replacing said building or buildings, and the policies issued for the insurance of said building or buildings shall contain a clause or provision that the moneys to be paid thereunder in case of loss or damages as aforesaid shall be paid and applied as
82 herein provided in case the loss or damage exceeds one-fourth of the value of said building or buildings, or more, as aforesaid. Should such sum, however, not be sufficient to repair or replace such building or improvements so damaged or destroyed, then and in that event the additional sum of money necessary to that end and for that purpose, shall be advanced and paid by the said party of the second part, its successors and assigns, and the building so damaged or destroyed by fire shall immediately and without any delay be restored and rebuilt by said party of the second part, its successors and assigns; provided, that in case of destruction of said building by fire, the cost of replacing the same need not be in excess of the value of the building destroyed at the time of its destruction.

And the said party of the second part, its successors and assigns, also covenant and agree with the said party of the first part, that they will on or before the first day of April, or before the property or any part thereof shall be advertised for sale, of each and every year during the existence of this lease, well and truly pay or cause to be paid, at their own cost and charges all rates, taxes, and assessments of whatsoever kind and nature, as shall or may from the first day of February, A. D. 1890, and during the term of ninety-nine (99) years hereby created, be lawfully imposed, levied on, charged or assessed upon and growing out of said demised premises. And if at any time after any such rate, tax or assessment, shall have become due or payable, the party of the second part, its successors or assigns shall neglect to pay such rate, tax or assessment it may be lawful for the party of the first part to pay the same at any time thereafter, and the amount of any and all such payments so made by the party of the first part shall be deemed and taken as, and is hereby declared to be so much further and additional rent for the above demised premises, to be immediately due from and payable by the said party of the second part, and the same may be collected as other rent, and in addition thereto whatever penalty or forfeiture is herein provided for the non-payment of rent, shall also exist and be available to the party of the first part, and operate against the party of the second part, its successors and assigns, for the non-payment of any such rate, tax, or assessment, as herein provided.

83 It is expressly understood, agreed, and convenated by and between the parties hereto, that if the rent above reserved, or any part thereof, shall be behind and remain unpaid for the period of fifteen days (15) after the same ought to be paid as aforesaid, or if default shall be made in any of the covenants or agreements herein contained, to be kept or performed by the said party of the second part, its successors or assigns, it shall and may be lawful for the party of the first part, his heirs, executors, administrators, agent, attorney or assign, at his or their election and the said party of the first part, his heirs, personal representatives or assigns shall have and are hereby given the right, power, and authority at any time after thirty days' notice (said notice to be served personally, if personal service can be had in the said city of Denver, but if such personal service can not be had, upon said party of the second part, its successors or assigns in said city of Denver, then said notice to be mailed at the said city of Denver to the last known place of residence of the said party of the second part, its successors or assigns, as the case may be), to sell and dispose of this lease, and all the right, title, benefit and equity which the party of the second part, its successors and assigns may have in and to the same, and in and to the said demised premises, together with all improvements thereon, at public auction, at the front door of the County Court House in the City of Denver, County of Arapahoe and State of Colorado, or at the said demised premises at one of the front doors thereof, for the highest and best price the same will bring in cash, thirty days public notice having been previously given of the time and place of such sale, by advertisement in one of the morning daily newspapers at that time published in said City of Denver, and to make, execute, and deliver to the purchaser or purchasers at such sale, good and sufficient deed or deeds of conveyance for, or assignment of the said lease so sold, and of all the right, title, benefit, and equity of the said party of the second part, its successors and assigns thereunder and in said demised premises, and out of the proceeds or avails of such sale, and the purchase money paid thereon, after first paying all costs of advertising said sale, commissions and other expenses, including all moneys advanced for taxes or
84 other liens and assessments, and all rents due at the time of such sale, with interest thereon, to pay the overplus (if any) unto the said party of the second part, its successors and assigns, on reasonable request. And it shall not be obligatory upon the purchaser or purchasers at any such sale, or subsequent sale or sales, to see to the application of the purchase money, which sale or sales so made, shall be a perpet-

ual bar, both in law and equity, against the said party of the second part, its successors and assigns, and all other persons claiming the demised premises aforesaid, or any part thereof, by, from, through, or under said party of the second part, its successors or assigns or any of them, and either the first or second party hereto, their heirs, administrators, successors, or assigns, may become the purchaser of said lease, and of all the rights of the said party of the second part, its successors and assigns thereunder, and in said demised premises. And the said party of the second part, its successors and assigns, do hereby covenant and agree to surrender and deliver up the said above described premises and property peaceably, to the purchaser or purchasers of said lease, and of all the right, title, benefit and equity of the said party of the second part, its successors and assigns therein; and if the said party of the second part, or its legal representatives and assigns, shall remain in possession of the same thirty days after the termination of this lease, as before provided, or ten days after any sale of said lease and of the right, title, benefit, and equity of the said party of the second part, its successors and assigns therein as aforesaid, he or they shall be deemed guilty of a forcible and unlawful detainer of the premises, and shall be subject to all the conditions and provisions above named, and to eviction and removal, forcible or otherwise, with or without process of law, as above set forth.

It is further understood and agreed by and between the parties hereto, that the same rights and remedies available to the said party of the first part, his heirs, personal representatives and assigns, against the said party of the second part, its successors and assigns, under this lease shall exist and be available for default in the payment of any rent, rates, taxes, or assessments reserved and to be paid under this lease, or for the breach or violation of any other covenant, condition, or agreement herein contained and to be kept and performed by the said party of the second part, its successors and assigns, against purchasers at any sale or sales made under this lease, as hereinbefore provided, their heirs, successors and assigns; and further, that said remedy of sale in case of failure to pay the rents, rates, taxes, or assessments at the time and in the manner herein provided in this lease, or in case of a breach or violation of any other covenant, or agreement herein contained, to be kept or performed by the said party of the second part, its successors or assigns, shall exist whenever there may be a default in the payment of the rent, rates, taxes, or assessments as herein provided, or a breach or violation of any agreement, covenant, or condition herein contained, notwithstanding one or more sales may have been had

under the provisions hereof, said power of sale to be a continuing one until this lease shall have been terminated, but said remedy of sale shall not be construed as preventing the said party of the first part, his heirs, executors, administrators, agent, attorney, or assign from maintaining a personal action or actions to recover any rents becoming due hereunder or for moneys paid out on account of rates, taxes, or assessments on said demised premises.

It is further agreed and covenanted that any purchaser or purchasers of this lease, or of the right, title, and interest of said party of the second part, its successors and assigns, in said demised premises, at any sale or sales made hereunder as herein provided, their heirs, personal representatives, successors and assigns shall take and hold said lease and said demised premises subject to all the agreements covenants and conditions, and the same rent to be paid, kept, and performed by the said party of the second part, its successors and assigns, and that all rights and remedies herein reserved or available to said party of the first part, his heirs, personal representatives and assigns, shall and are hereby expressly reserved to said party of the first part, his heirs, legal representatives and assigns, against any purchaser or purchasers at the first sale made hereunder, and against any purchaser or purchasers at any such subsequent sale or sales, their heirs, personal repre-
86 sentatives, successors and assigns. For further indentification a plat of the realty demised herein is hereto attached and made a part hereof, said plat being drawn on a scale of sixteen feet to the inch.

The said party of the second part, for itself, its successors and assigns, covenants and agrees to and with the said party of the first part, his heirs personal representatives and assigns, that it will not erect or cause or permit to be erected any part of said building upon that portion of the said demised premises included within the red lines shown upon said plat above the level of the 16th street grade, and said party of the second part, its successors and assigns, further covenant and agree that that portion of the said demised premises included within the said red lines shall remain open and unobstructed for the purpose of light and air for the said building proposed to be erected by the said party of the second part, its successors or assigns, as well as for the buildings now situate upon and owned, and which may be erected hereafter, by the said party of the first part, his heirs and assigns, upon the parts of said lots one (1), two (2), three (3), and four (4), not hereby demised, and upon lots five (5) and six (6) all in said block seventy-five (75) in the East Division of said city, and that the said premises within the said red lines shall not be used for the purpose of

storage of personal property of any kind; said premises included within said red lines being described as follows, to-wit:

Commencing at a point on the outside line of the northeasterly wall of the said "Schleier Block" which is twenty-four (24) feet and six inches distant from Lawrence Street; thence in a southeasterly direction along the said outside line of said wall to a point which is eighty-five and eighty-five one hundredths (88.85) feet distant from said Lawrence Street; thence at right angles in a northeasterly direction to a point on the outside line of the wall of the said "Tribune Building", and which point is forty-one (41) feet distant from Sixteenth Street; thence at right angles parallel with Sixteenth Street and in a northeasterly direction six (6) feet; thence at right angles parallel with Lawrence Street in a southwesterly direc-
87 tion to a point six (6) feet from the outside line of said wall of said "Schleier Block," thence at right angles parallel with Sixteenth Street towards Lawrence Street, to a point which is twenty-four (24) feet and six (6) inches distant from said Lawrence Street; thence at right angles to the point of beginning.

It is further understood and agreed by and between the parties hereto, that that portion of said demised premises included within the blue lines, as shown upon said plat, may be excavated, and that portion thereof beneath the official grade shall be for the exclusive use of the said party of the second part, its successors and assigns, that on the northeasterly side of said strip, the said party of the second part will erect or cause to be erected, at its own cost and expense, a foundation wall such as will be put in elsewhere for the building to be erected upon said demised premises the stone pillars of which said wall below the surface or official grade, shall rest six inches upon said strip, and that said wall is to be the exclusive property of the said party of the first part, except as it serves as an inclosing wall for the excavation to be made, that said excavation is to be covered in a substantial way by flag-stone, or other equally substantial covering, and after so covered, said strip, except the portion under said cover is to be left open and used as a private way for the building to be erected as aforesaid, as well as for the buildings now owned by the said party of the first part, and the buildings which may be erected hereafter by the said party of the first part, his heirs and assigns, upon any portion of said lots one (1), two (2), three (3), four (4) five (5) and six not hereby demised said strip in this paragraph referred to being described as follows, to wit:

Commencing at a point where the outside line of the northeasterly wall of the office and boiler room addition to the said

"Schleier Block" intersects said alley; thence along said alley in a northeasterly direction nineteen (19) feet; thence at right angles parallel with Sixteenth street in a northwesterly direction thirty-six and fifteen one-hundredths (36.15) feet; thence at right angles in a southwesterly direction nineteen (19) feet; thence at right angles in a southeasterly direction thirty-six and fifteen one-hundredths (36.15) feet to the place of
88 beginning, being a strip of land nineteen (19) feet on said alley, by thirty-six and fifteen one hundredths (36.15) feet adjoining the office and boiler room addition to the said "Schleier Block."

It is further understood and agreed that no rights to any water from the artesian well located in the alley in said block seventy-five (75) shall pass hereunder.

The said party of the second part, its successors and assigns, further covenant and agree to and with the party of the first part that they will protect the walls of the so-called "Schleier Block" and of the office and boiler room addition thereto, and the walls of the "Tribune Building" adjoining the premises demised herein, and will save said party of the first part, his personal representatives, heirs, and assigns, harmless from any and all damage of whatsoever name and nature he or they may sustain by reason of any excavation for any building or improvements to be erected or made upon said demised premises.

The party of the first part further covenants and agrees, that the party of the second part, its successors and assigns, shall have the right to construct the footings for all foundation walls for its building beneath the foundation walls of the said "Schleier Block" and boiler room addition and the "Tribune Building" and to enter both of said buildings for the purpose of doing what may be necessary to properly support and maintain the walls and foundation of said block and buildings, provided the said party of the second part, its successors and assigns, shall do the same in a skillful and workmanlike manner, and said party of the second part, its successors and assigns, shall have said right and privilege without any additional cost or charge therefor.

It is further covenanted and agreed by and between all the parties hereto, that all the agreements, conditions and covenants in this lease shall be binding upon the heirs, personal representatives, successors and assigns of the respective parties hereto.

And the said party of the first part, for himself, his heirs, executors and administrators, covenants and agrees to and

with said party of the second part, its legal representatives, successors or assigns, that at the time of the ensealing
89 and delivery of these presents he is well seized of said premises in fee simple, and has good right, full power and lawful authority to let and demise the same in manner and form as aforesaid, and that the same are free and clear of all liens and encumbrances whatever.

It is expressly understood and agreed, that at the option of said party of the second part, its successors or assigns, the said party of the first part hereby agrees to extend this lease for a further term of fifty (50) years from the term of ninety-nine (99) years hereinbefore mentioned, at the same rent, and upon the same terms, conditions, agreements, and covenants herein contained:

Provided, however, that ninety (90) days' notice, prior to the expiration of said ninety-nine (99) years shall be given by the said party of the second part, its successors or assigns to the said party of the first part, his representatives, heirs, or assigns, of their intention to avail themselves of said option.

In testimony whereof, the said party of the first part has hereunto set his hand and seal, and the said party of the second part has caused these presents to be signed by its president, attested by its cashier thereunto duly authorized, and its corporate seal to be hereunto affixed, all in duplicate, the day and year first above written.

[Seal] GEORGE C. SCHLEIER,
THE PEOPLES NATIONAL
BANK OF DENVER,
By M. J. Lawrence, President.

Attest: C. Y. McClure, Cashier.
[Bank Seal]

The words, "above the level of the sixteenth street grade" and "the parts of" on page 11 and the words: "and boiler room addition" on page 14 were interlined in writing before execution.

GEORGE C. SCHLEIER,
M. J. LAWRENCE, Pt.

Attest: T. M. Patterson.
G. C. Bartels.
J. H. Blood.

90 State of Colorado,
County of Arapahoe—ss.

George C. Schleier appeared before me this fourteenth day of September, A. D. 1889, in person, and acknowledged the foregoing instrument to be his act and deed for the uses speci-

fied therein; and that M. J. Lawrence, as president, and Charles Y. McClure, as cashier, respectively, of The Peoples National Bank of Denver, appeared before me this fourteenth day of September, A. D. 1889, in person, and acknowledged the foregoing instrument to be the act and deed of The Peoples National Bank of Denver aforesaid, for the uses specified therein.

My commission expires May 18th, 1893.
Witness my hand and official seal.
[Seal] CARLOS WOOD,
Notary Public.

12. That acting under and by virtue of said alleged pretended lease, and in accordance with the provisions thereof, and not otherwise, the said national banking association took possession of said premises on or about the first day of February, A. D. 1890, and thereafter, in alleged pretended accordance with the provisions of said alleged pretended lease erected upon the premises therein described a large and commodious office and store building, occupying the whole of said premises, as stipulated by said alleged pretended lease.

13. That said building (which, for convenience and brevity in reference will be hereinafter styled the "Bank Building"), was built of brick, stone, steel, iron, and timber, and consisted of eight stories or floors above the cellar, and was constructed according to and was fitted with the latest modern im-
91 provements in building, such as gas and electricity, hot and cold water, two elevators, steam heating apparatus, and cost over the sum of the said capital stock of said defendant bank, that is to say, over the sum of three hundred thousand dollars ($300,000), viz. about the sum of three hundred and five thousand seven hundred and twenty-five and thirty-nine hundredths dollars ($305,725.39) all of which was done with the full knowledge, consent, and approval of said defendant Schleier.

14. That said bank building contained a large number of store and office rooms, viz: Six (6) store rooms on the ground floor, two (2) very large store or banking rooms, fitted with burglar-proof vaults, on the second or main floor, and about eighty-four (84) offices in the remaining stories thereof, and was built and adapted for being rented as a store and office building, as a real estate speculation, and was not confined to such a banking house or building as should be necessary for its the said defendant bank's immediate accommodation in the transaction of its business, and for no other purposes, as by the said National Bank Act, provided.

15. That thereafter, and on or about the month of January, A. D. 1891, the said bank building having been completed and prepared for occupation, said defendant national banking association moved its place of business into the said building, and thereafter, at all the times hereinafter mentioned, used and occupied one-half of the first or main floor for the transaction of its said banking business as well as the banking business of another corporation created and existing under the laws of the State of Colorado, known as and hereinafter called The People's Savings Bank; and thereafter rented, for pecuniary profit, and as a real estate speculation, the rest, residue, and remainder of the said building.

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16. That thereafter, at all the times hereinafter mentioned, the said defendant banking association continued in the ordinary conduct of its business as a national banking association and in the renting of the office rooms and stores in said building, conducting the same as a real estate speculation, until on or about the 19th day of July, A. D. 1893.

17. That on or about the 19th day of July, A. D. 1893, the said defendant banking association, being unable to pay its depositors in the due course of business, in accordance with the provisions of said National Bank Act, in such case made and provided, the Honorable Comptroller of the Currency of the United States took possession thereof, under the said National Bank Act, and appointed one J. B. Lazear as the Receiver thereof, and he, the said J. B. Lazear as such receiver, remained in possession of said bank and its assets and affairs until on or about the 21st day of August, A. D. 1893, when, upon the agreement of said bank to make a voluntary assessment of twenty (20) per cent. to restore the impairment of its share capital, the said receiver was discharged, and the directors and officers of the said bank, and the said bank, were restored to, and at all times thereafter hereinafter alleged, until the appointment of this plaintiff, were in the possession, control, and management of its said business and affairs; and your orator avers, upon his information and belief, and so charges the fact to be, that at all times hereinafter mentioned, on and after the said 19th day of July, A. D. 1893, the said defendant banking association was, and still is insolvent.

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18. That about the times last aforesaid, viz., on and about and subsequent to the taking of possession of the said bank by the Honorable Comptroller of the currency of the United States, as aforesaid, the assets, business, and affairs of the said defendant national bank were very much involved, mixed, and commingled with those of said The People's Savings Bank, with whom it was located, in doing banking business, in the

same banking room in said bank building; and that such commingled, mixed, and involved condition of the assets, business, and affairs of said defendant national bank and said The People's Savings Bank continued until finally settled on or about the 20th day of November, A. D. 1899, by the rendition of a final judgment in favor of said Fermor J. Spencer, Esquire, as the assignee of said The People's Savings Bank as hereinafter alleged.

19. That on or about the 29th day of June, A. D. 1895, the said The People's Savings Bank, by reason of the said mingled, mixed, and involved condition of its assets, business, and affairs with those of the said defendant National Bank, became further unable to proceed with the conduct of its savings
94 banking business, and then and there made a general assignment of all its assets and estate to one Fermor J. Spencer, as assignee thereof, who was and at all the times hereinafter mentioned still is in the possession, control, and management of the assets, business, and affairs of said The People's Savings Bank, in the administration of the said assignment and said assigned estate.

20. That at all the times thereafter, from on or about the 29th day of June, A. D. 1895, when the said Spencer as Assignee, was appointed, and the said savings bank made the said assignment, until on or about the month of November, A. D. 1896, the said defendant national bank admitted that it was the debtor of the said The People's Savings Bank, and the said national bank co-operated with the said Spencer, as Assignee of said savings bank, in making a settlement and in adjusting the relations, business, assets, and affairs of the said institutions; but about said last mentioned, date, viz: on or about the month of November, A. D. 1896, the said defendant People's National Bank and its officers and directors commenced to deny, and at all times thereafter, until the rendition of said judgment, continued to deny all further liability, of every name, nature, and description whatsoever, from it, the said defendant national bank, to the estate of said savings bank, and to the said Spencer as Assignee thereof.

21. That thereafter, and in the month of January, A. D. 1897, the said defendant national bank commenced to take steps for placing the said defendant national bank in
95 course of voluntary liquidation and for a surrender of its charter; and thereafter, and on or about the 27th day of April A. D. 1897, the stockholders of said defendant national bank, in alleged compliance and pursuance of the said National Bank Act, held a meeting and determined upon a vol-

untary liquidation of the said bank and a dissolution and surrender of its charter; and thereafter, in alleged pursuance of the provisions of the National Bank Act, in such case made and provided, published a notice of said defendant bank's intention to go into liquidation, and for the presentation of claims against the said bank, the last day of which expired on or about the 27th day of June, A. D. 1897.

22. That on or about the 26th day of June, A. D. 1897, and prior to the expiration of the time for the presentation of claims, and when the said bank would, if all its debts have been paid, have been entitled to become dissolved and to have surrendered its charter, the said defendant bank having failed, neglected, and refused to make full settlement, adjustment of, and accounting for a very large amount of the assets, property, and estate of the said savings bank, the said Fermor J. Spencer, as assignee of said The People's Savings Bank, threatened to commence, and did, to the extent of serving a summons, commence an action against the said national bank, and at the same time served notice of the said claims and
96 demands of him, the said Spencer, as Assignee of the said savings bank, against the said defendant national bank, upon the Honorable Comptroller of the currency of the United States; that thereupon, as a result of the action last aforesaid of the said Spencer as assignee the said defendant national bank entered into an agreement with the said Spencer, as assignee, which was and is in words and figures as follows, to wit:

This Agreement, made and entered into this 2d day of July, A. D. 1897, by and between Fermor J. Spencer, Assignee of The People's Savings Bank, party of the first part, and The People's National Bank of Denver, party of the second part.

Witnesseth, that whereas, certain contentions and disputes have arisen in regard to the relationship of the said two banks and whereas, the said party of the first part has commenced a suit against the said party of the second part by serving summons on the 26th day of June, 1897, for the purpose of effecting a setttlement of said contentions and disputes; and,

Whereas, it seems advisable to both parties thereto that further steps in said suit should not be taken before January 1, 1898, to give time for better understanding in the matter.

Now, Therefore, it is hereby agreed that the party of the first part shall refrain from taking any further steps in said suit until January 1, 1898, without prejudice of any nature of character whatsoever by reason of such delay; and the said party of the second part, in consideration of the delay in fil-

ing said complaint in said suit, hereby agrees that it will take no further action of any kind or nature whatsoever to the prejudice of the said party of the first part in the above named suit, or any further action whatsoever for the surrender
97 of its charter as a national bank, or the disposal of its property to the prejudice of the said party of the first part.

In Witness Whereof, the said parties have hereunto set their hands the day and year first above written.

(Signed) F. J. SPENCER, Assignee
The People's Savings Bank.
THE PEOPLE'S NATIONAL BANK,
By M. J. Lawrence, President,
By D. D. Muir, Vice-President.

23. That thereafter, and on or about the 20th day of September, A. D. 1897, said defendant national banking association, in furtherance of its determination to liquidate, dissolve, and wind up its affairs, issued a notice and called a special stockholders' meeting, of which the notice thereof was in words and figures as follows, to wit:

Stockholders' Meeting of The People's National Bank of Denver.

Notice is hereby given that a special meeting of the stockholders of The People's National Bank of Denver, Colorado, will be held at the banking room of said bank, on the 30th day of October, 1897, at 2 o'clock p. m., to consider a proposition to turn over the banking house of the said bank to George C. Schleier, the owner of the land on which the building is situated.

Owing to the fact that the income of the property is less than the fixed charges, it has become necessary to take some action to relieve the bank. It is important that all stockholders be present or duly represented. If you can not be present, please sign the enclosed proxy and return same to cashier at once.

If you have no other, the name of Biddle Reeves is suggested for proxy.

By order of the board of directors.
98 Denver, September 20, 1897.

M. J. LAWRENCE,
President.
J. H. CLEMES, Cashier.

And on the 28th day of September, A. D. 1897, said defendant National Banking Association, for the purposes aforesaid, issued another and further notice calling a special stockholder's meeting of which the notice therof was in words and figures as follows, to wit:

Stockholders' Meeting of The People's National Bank.

Notice is hereby given that a special meeting of the stockholders of the People's National Bank of Denver, Colo., will be held at the banking room of said bank on the 30th day of October, 1897, at 2 o'clock p. m. to consider the advisability of the present stockholders, with such other persons as may desire to do so, organizing a corporation under the laws of the State of Colorado to control the bank's assets, and to perform such other acts as may be contemplated in the certificate of incorporation of such new company.

A reorganization, such as contemplated, with a small capitalization, will be a great saving to the stockholders in reducing the amount of taxes now paid by the bank.

If you can not be present at the meeting in person, kindly sign the inclosed proxy to Mr. Biddle Reeves, and mail to the undersigned.

THE PEOPLE'S NATIONAL BANK,
By M. J. Lawrence, President.

Denver, Colo., September 28, 1897.

And on the day of December, A. D. 1897, said defendant National Banking Association, for the purposes aforesaid issued another and further notice, calling an annual stockholders' meeting, of which the notice thereof was in words and figures as follows, to wit:

99 Annual Stockholders' Meeting.

You are hereby notified that the annual meeting of the stockholders of the People's National Bank of Denver, Colorado, will be held in room 801, People's Bank Building, Denver, Colo., at 10 o'clock a. m. Tuesday, January 11, 1898.

At this meeting there will be an election of a board of directors for the ensuing year, and a proposition will then be submitted to wind up the business of the People's National Bank, and to make some suitable disposition of its assets; and such other business will be transacted as may be necessary or proper.

Please fill out enclosed proxy and mail to undersigned.

JAMES H. CLEMES, Cashier.

801 People's Bank Building, Denver, Colo.

24. And plaintiff further alleges that said banking house referred to in said stockholders' notice was the said banking house herein referred to in the allegations of this bill.

25. And plaintiff further alleges that for a long time prior to the giving of said stockholders' notice the said banking association and its officers and agents neglected the business of attending to the renting of the stores, offices, and rooms in said

Bank Building, and neglected to keep the same in good order and repair, and brought the same into disrepute and allowed it to run down, and allowed the rents thereof to remain uncollected and the taxes thereon to remain unpaid, and also diverted the moneys and income received from the renting of the offices, stores, and rooms in said Bank Building to other purposes than the payment of the rent and the taxes and charges, repairs and expenses of taking care of said
100 Bank Building, so that on or about the 30th day of October, A. D. 1897, there was due and owing to the said defendant George C. Schleier, as rent under said alleged pretended lease, for the months of August, September, and October, A. D. 1897, the sum of eleven hundred and sixty-four dollars and fifty-eight cents ($1164.58) due August 15th, 1897, the sum of eleven hundred and sixty-four dollars and fifty-eight cents ($1164.58) due September 15th, A. D. 1897, and the sum of eleven hundred and sixty-four dollars and fifty-eight cents ($1164.58) due the 15th day of October, A. D. 1897, and also the further sum of twenty-four hundred and eighteen dollars and five cents ($2418.05) due on account of the second half of the general taxes levied upon said premises for the year A. D. 1896, and also the sum of fifty-six dollars and forty cents ($56.40) due on account of an assessment made against said demised premises for the paving of the alley in the rear thereof, all of which said rents, taxes, and assessments the said defendant bank failed and neglected to pay, and permitted to remain unpaid.

26. Plaintiff further alleges that he is informed and believes and so charges the fact to be, that although it was and is represented in said notice calling said stockholders' meetings hereinbefore set forth, and also at the meeting of said stockholders, held in pursuance of said notices and by the officers of said defendant banking association, and by the attorneys and agents of said defendant Schleier, present at said
101 Stockholders' meetings, that the income of said property, meaning said bank building, was less than the fixed charges, in truth and in fact such was not the case, but that the rents and income from said property, in the neglected condition in which it then was, because of the misconduct and neglect of the said banking association and its officers and agents to care for and look after the renting of the same and the collection of the rents and its maintenance, were, as this plaintiff is informed and believes, and so charges the fact to be, sufficient to pay the rents and all charges due and required to be paid under the said alleged pretended lease, and to keep and maintain the said bank building in good order and repair.

27. Plaintiff further alleges, upon information and belief, and so charges the fact to be, that there were present at such

stockholders' meeting, a number of the shareholders of said defendant National Bank, who were opposed to and protested against, and voted against the conveyance, transfer, and surrender of said bank building and lease to said Schleier, and insisted that said defendant Schleier should exercise the remedies given him by said alleged pretended contract, instead of coercing and compelling a conveyance and surrender of said bank building; but their protests and objections were of no avail, and the stockholders at all times thereafter hereinafter mentioned, were, and still are, protesting and objecting against the said last mentioned transaction herein set forth, whereby the said bank building and lease were conveyed, transferred and surrendered to said defendant Schleier.

28. That this plaintiff is also informed and believes, and so charges the fact to be, that if the said defendant Schleier
102 had been willing to exercise the remedies given him by the said alleged pretended contract of lease, the interest of said defendant National Bank in said bank building and premises could have been sold and disposed of for an amount more than sufficient to pay all the then indebtedness owing to said defendant Schleier, and to have left a large amount to be applied by said defendant National Bank in payment of its other debts and liabilities; and that said defendant Schleier well knew that this could be done, but refused to permit the same to be done, and threatened to hold the said defendant bank and its stockholders personally liable for the balance of the then unexpired ninety-nine (99) year term of said alleged pretended lease, at the said rental therein named.

29. Your orator further complaining, alleges that said defendant banking association thereafter, and in violation of the statutes of the United States in such case made and provided, and contrary to the principles of equity governing the distribution and disposition of assets and payment of dividends on the dissolution of insolvent corporations, in consideration of being released from the obligation of paying such taxes and assessments under said alleged pretended lease upon said demised premises, and especially the said rent that had accrued for the said months of August, September, and October, A. D. 1897, and the second half of taxes for the year A. D. 1896, and that said alley assessment, and in virtue of the further consideration that he, the said Schleier, should release said bank and all its stockholders from any and all liability which might thereafter accrue against them or either of them under
103 and by virtue of the covenants and conditions of said alleged pretended lease, and in consideration of the said defendant Schleier accepting as rent for the said demised premises for the month of October, A. D. 1897, the rents ac-

cruing from the tenants of said bank in said building, less the expense of running said building for said month, did pretend, by instruments in writing, to bargain, sell, assign, transfer, convey, surrender and yield up unto the said defendant Schleier, his heirs and assigns, the said alleged pretended lease of the said demised premises therein described, including the improvements and the said bank building situate thereon and the term of years in said alleged pretended lease yet to come, and did cancel said alleged pretended lease, and did also, on or about said 30th day of October, A. D. 1897, surrender and deliver to the said Schleier the possession of the said premises, together with said bank building, and that ever since the 30th day of October, A. D. 1897 the said defendant Schleier has been and still is in the occupation and possession of the said premises, and said Bank Building, and claims to be the owner in fee simple thereof, free from any claim, right, title, or interest of any kind on the part of said defendant The People's National Bank of Denver, therein and thereto; that said instruments of writing purporting to make said surrender and cancellation of said lease and of the possession of said Bank Building, bore date October 30th, A. D. 1897, and were recorded on the 8th day of November, A. D. 1897, in book 1211, at pages 98 and 100 thereof, in the office of the Clerk and re-
104 corder of said Arapahoe County.

30. That said last mentioned instruments omitting only the notarial acknowledgments thereof, were and are in words and figures as follows: to-wit:

Release of Lease.

Peoples National Bank to George C. Schleier. Filed for record at 11:10 o'clock a. m., November 8th, 1897.

R. LeBERT, Recorder.

Whereas by lease or indenture dated September 12th, 1889, and recorded in book 547 commencing at page 1, of the records in the office of the clerk and recorder of Arapahoe County, State of Colorado, George C. Schleier demised and leased to the Peoples National Bank of Denver, those certain premises described in said lease, situate in the city of Denver, County of Arapahoe, and State of Colorado, and also described as follows, to-wit:

Commencing at the most northerly corner of lot one (1) in block seventy-five (75) in the east division of the city of Denver; thence southwesterly along Lawrence Street ninety-eight and eighty-five one hundredths (98.85) feet; thence along the northerly wall of the building known as The "Schleier Block" and the office and boiler room addition thereto, upon the outside thereof, one hundred and twenty-five (125) feet to the

alley in said block; thence northeasterly along the said alley nineteen (19) feet; thence at right angles in a northwesterly direction thirty-six and fifteen one hundredths (36.15) feet; thence in a northeasterly direction in a straight line to a point on the line of Sixteenth Street which is eighty-eight and ninety-seven one hundredths (88.97) feet southeasterly from Lawrence Street; thence northwesterly along the line of Sixteenth Street eighty-eight and ninety-seven one-hundredths (88.97) feet to the place of beginning; being part of lots one (1), two (2), three (3), four (4), in block seventy-five (75) upon which premises is now situate the building known as the Peoples Bank
105 Building.

Now, know all men by these presents: That the said The Peoples National Bank of Denver, doing business in the city of Denver and organized under the National banking laws of the United States, in consideration of the said George C. Schleier releasing the said bank and its stockholders from the payment of the August and September 1897 rent for said premises and from the payment of the second half of the 1896 taxes against the same and the alley paving assessment against the same and in the further consideration that the said George C. Schleier releases said bank and all of its stockholders from any and all liabilities which may hereafter accrue against them, or either of them under and by virtue of any of the covenants or conditions of said lease, and in the further consideration of the said George C. Schleier accepting as rent for the month of October, 1897, the rents accruing from the tenants in said building, less the expense of running the building for said month, has and hereby does bargain, sell, transfer, convey, surrender and yield up unto the said George C. Schleier, his heirs and assigns, said lease and said premises herein and hereinbefore described, including the improvements and the building situate thereon and the term of years in said lease yet to come.

And it is further covenanted and agreed that said lease is hereby cancelled.

In witness whereof, the said The Peoples National Bank of Denver has caused these presents to be signed in its name by Biddle Reeves, Chairman and Presiding Member, and J. H. Clemes, its Cashier, and its corporate seal to be hereunto affixed this 30th day of October, A. D. 1897.

THE PEOPLES NATIONAL BANK
(Corporate Seal) OF DENVER,
By Biddle Reeves,
Chairman and Presiding Member
and J. H. Clemes, its Cashier.

106 Release of Lease.

Peoples National Bank to George C. Schleier. Filed for record at 1:25 o'clock p. m., November 8, 1897.

R. LeBERT, Recorder.

Whereas by lease or indenture dated September 12, 1899, and recorded in book 547, commencing at page 1 of the records in the office of the Clerk and Recorder of Arapahoe County Colorado, George C. Schleier demised and leased to the People's National Bank of Denver, those certain premises described in said lease situate in the city of Denver, County of Arapahoe, and State of Colorado, and also described as follows, to-wit:

Commencing at the most northerly corner of lot one (1) in block seventy-five (75), in the East Division of the city of Denver, thence southwesterly along Lawrence Street ninety-eight and eighty-five one hundredths (98.85) feet; thence along the northerly wall of the building known as the "Schleier block", and of the office and boiler room addition thereto, upon the outside thereof, one hundred and twenty-five (125) feet to the alley in said block; thence northeasterly along the said alley nineteen feet; thence at right angles in a northwesterly direction thirty-six and fifteen one hundredths (36.15) feet; thence in a northeasterly direction in a straight line to a point on the line of Sixteenth Street, which is eighty-eight and ninety-seven one-hundredths (88.97) feet southeasterly from Lawrence street; thence northwesterly along the line of Sixteenth Street eighty-eight and ninety-seven one hundredths (88.97) feet to the place of beginning, being part of the lots one (1), two (2), three (3), four (4), in block seventy-five (75) upon which premises is now situate the building known as the People's Bank Building.

Now, know all men by these presents: That the said The People's National Bank of Denver, doing business in the city of Denver and organized under the national banking laws of the United States, in consideration of the said George C. Schleier releasing the said bank and its stockholders from the payment of the August and September, 1897, rent for said premises, and from the payment of the second half of the 1896 taxes against the same, and the alley paving assessment
107 against the same, and in the further consideration that the said George C. Schleier releases said bank and all of its stockholders from any and all liabilities which may hereafter accrue against them, or either of them, under and by virtue of any of the covenants and conditions of said lease, and in the further condition of the said George C. Schleier accepting as rent for the month of October, 1897, the rents accruing

from tenants in said building, less the expense of running the building for said month, has and hereby does bargain, sell, assign, transfer, convey, surrender, and yield up unto the said George C. Schleier, his heirs and assigns, said lease and said premises therein and hereinbefore described, including the improvements and the building situate thereon and the term of years in said lease yet to come.

And it is further covenanted and agreed, that said lease is hereby cancelled.

In witness whereof, the said The People's National Bank of Denver has caused these presents to be signed in its name by M. J. Lawrence, its president, and J. H. Clemes, its cashier, and its corporate seal to be hereunto affixed, this 30th day of October, A. D. 1897.

THE PEOPLE'S NATIONAL BANK OF DENVER,
By M. F. Lawrence, its president and
[Corporate Seal] J. H. Clemes, Its cashier

31. That on or about July 21, 1889, and at all times hereinafter mentioned, the People's Savings Bank was, and still is a savings bank corporation, created, organized and existing as a savings bank, under and in pursuance of the general statutes of the State of Colorado, providing for the creation and organization of all kinds of corporations, including the incorporation of savings banks.

(b) That during all the times last aforesaid, until on or about the 10th day of January, A. D. 1893, said Savings
108 Bank had a paid-up capital of the sum of fifty thousand dollars ($50,000) and thereafter at all times, a paid-up capital of the sum of about one hundred thousand dollars ($100,000).

32. That from on or about said July 21, 1889, until on or about the 29th day of June, 1895, when said Savings Bank made said general assignment to said Fermor J. Spencer, as assignee, as hereinbefore alleged, said Savings Bank was engaged at the said city of Denver, in carrying on and conducting the business of a savings bank, as authorized by its said charter under said general incorporation laws, and during the time last aforesaid, in so doing, it received on deposit all such sums of money as were from time to time offered it by tradesmen, mechanics, laborers, servants, minors, and others, for the purpose of safe keeping and being invested, which said deposits said Savings Bank was bound by its said charter and the law to repay with interest, to such depositors, or his or her lawful representative, whenever required by the depositor;

and in case of the insolvency of said bank, its said savings depositors were by the said charter and the general incorporation law, entitled to preference in payment over all other creditors and shareholders of said Savings Bank.

33. That during all the times last aforesaid, on, at, and after the time of the creation, organization and commencement of business by said defendant National Bank, down to on or about the 29th day of June, A. D. 1895, the time of said general assignment by said Savings Bank hereinbefore alleged, said Savings Bank had a very large number of depositors, made up of tradesmen, mechanics, laborers, servants, minors, and others, residing in and near the said city of Denver, the aggregate amount of whose deposits at the said date of August 1st, A. D. 1889, during the said month of August last aforesaid, was about two hundred thousand dollars ($200,000); that the aggregate amount of the deposits made by such depositors was thereafter rapidly increased from time to time, so that during the month of September, A. D. 1889, the said depositors had on deposit with said Savings Bank, the aggregate amount of about two hundred and thirteen thousand dollars ($213,000) which said aggregate amount of deposits by said depositors was thereafter increased from time to time until during the months of April and the fore part of May, A. D. 1893, said Savings Bank, had, of the moneys of the said depositors the aggregate sum of about one million two hundred and seventy thousand dollars ($1,270,000);

34. That long prior to the making and execution of said alleged pretended lease between the said defendant Schleier and the said defendant National Bank, hereinbefore set forth, and from the very first day of the legal existence of the said defendant National Bank and from the very first day of its commencement of business, viz: on or about the 1st day of August, 1889, and at all times thereafter herein mentioned, until on or about the 29th day of June, 1895, when said The People's Savings Bank made its said general assignment, as hereinbefore alleged, it, the said People's Savings Bank, was a depositor of its said deposits with said defendant The People's National Bank, and said defendant National Bank received the deposits and assets of said Savings Bank to a very large amount, viz: to nearly the full sum of each of the said several amounts of said Savings Bank's said deposits, hereinbefore alleged; that during all the times last aforesaid, the said defendant, The People's National Bank, was, and still is, liable to and indebted to it, said People's Savings Bank, and to its said Assignee, Fermor J. Spencer, for said Savings Bank's said deposits and assets; and that the said judgment hereinafter mentioned and set forth in favor of the said

Spencer, as Assignee of the said Savings Bank, against the said defendant National Bank, for the sum of four hundred and seventy-five thousand eight hundred and twenty-five dollars and seventy-one cents ($475,825.71) was and is the amount adjudged and decreed as due and owing, on and prior to the said 29th day of June, A. D. 1895, the date of said general assignment, from the said defendant National Bank to the said estate of the said People's Savings Bank, to be paid in the hands of said Spencer, as Assignee thereof, upon an accounting had between the said defendant National Bank and the said People's Savings Bank, and its said Assignee, said Spencer, for the said deposits and assets, of the said Savings Bank, so made with, and received by the said defendant National Bank.

35. That long prior to the making and execution of the said alleged pretended lease between the said defendant Schleier and said defendant National Bank, hereinbefore set forth, to wit, during the month of August, and up to, on and
111 before about the 14th day of September, A. D. 1889, the time of the execution of said pretended lease, there were a number of the said depositors of the said Savings Bank who, during the said times prior to the making and execution of the said alleged pretended lease, were depositors of their said moneys in said Savings Bank, and who at all times thereafter hereinafter mentioned, until on or about the 29th day of June, 1895, the day of the said general assignment of said Savings Bank to said Assignee Spencer, as hereinbefore alleged, were, and continued to be depositors of said Savings Bank and to whom the said The People's Savings Bank, during all the time last aforesaid, was liable to repay their said deposits and which said Savings Bank's depositors were, and still are, at the time of the commencement of this action, depositors and creditors of the said Savings Bank, and beneficiaries of its said assigned estate and of said judgment rendered in favor of said Fermor J. Spencer, as Assignee of said Savings Bank, against said defendant National Bank in its said suit wherein said judgment of four hundred and seventy-five thousand eight hundred and twenty-five dollars and seventy-one cents ($475,825.71) was rendered, as hereinbefore and hereinafter alleged.

36. That from the time of the original creation and organization of said defendant National Bank, viz: on or about August 1st, A. D. 1889, to on or about the fore part of the
112 year A. D. 1897, about when the said defendant bank decided to place said defendant National Bank in voluntary liquidation, and surrender its charter, as hereinbefore alleged, it the said defendant National Bank in compliance with the provisions of the said Act of [illegible] and the Na-

tional Bank Act, and especially with the provisions of No. 5211 of the U. S. Revised Statutes, did, under the oath of its officers and the attestation of its directors, from time to time, not less than about five times a year, make to the Honorable Comptroller of the Currency of the United States not less than about five several reports, according to the form prescribed by said Comptroller, exhibiting in detail and under proper heads, the resources and liabilities of said bank at the close of business on any business day by him, said Comptroller specified, each of which said reports was published in a newspaper published and circulated in the said city of Denver and vicinity, wherein said defendant National Bank and said The People's Savings Bank were established and engaged in carrying on and conducting their several corporate banking business.

37. That, according to the form prescribed by the said Comptroller of the Currency, said defendant National Bank was required, in each such report, under the head of "Resources," and under the item thereunder of "Banking House," to state and enter only such real estate, at its market value as near as possible, as was held by said defendant National Bank under said National Bank Act, and particularly under No.
113 5137 of the United States statutes, as was necessary for its, said defendant National Bank's immediate accommodation in the transaction of its business, and no other.

38. That said defendant National Bank and its officers and directors, in compliance with said statutory provisions of said National Bank Act, and with the requirements by said Comptroller, as to the form thereof, did, from time to time, make oath to, attest, and deliver to the Honorable Comptroller of the Currency, and from time to time did publish the same in a newspaper published and circulated in said city of Denver and vicinity, said several reports as to its resources and liabilities, wherein it was stated that at the conclusion of business of said defendant National Bank, on the hereinafter mentioned dates of each of said reports, the said banking house was a resource and an asset of said defendant National Bank to the market value of a very large amount, as follows, viz:—

That on the respective dates of the 20th of September and the 11th day of December, in the year A. D. 1889, and the 28th day of February, A. D. 1890, the banking house, furniture and fixtures, comprising resources of the said defendant National Bank, was of the market value of about five thousand eight hundred dollars ($5,800).

That on May 17th A. D. 1890, the said banking house, furniture and fixtures of said defendant National Bank were of the market value of fifty-nine thousand eight hundred and sixty-five dollars and seventy seven cents ($59,865.77).

114 That on July 18th, A. D. 1890, the said banking house, furniture and fixtures were of the market value of one hundred thirteen thousand eight hundred and eighty-four dollars and fifty-five cents ($113,884.55).

That on October 2nd, A. D. 1890, the said banking house, furniture and fixtures were of the market value of one hundred seventy-three thousand eight hundred and twenty-eight dollars and ninety-nine cents ($173,828.99).

That on December 19th, A. D. 1890, the said banking house, furniture, and fixtures were of the market value of two hundred fifty thousand six hundred and eighteen dollars and thirty cents ($250,618.30).

That on February 26th, A. D. 1891, the said banking house, furniture, and fixtures were of the market value of two hundred ninety thousand eight hundred and nineteen dollars and seventy-two cents ($290,819.72).

That on May 4th, A. D. 1891, the said banking house, furniture, and fixtures were of the market value of three hundred thousand three hundred and ninety-two dollars and eighty-three cents ($300,392.83).

That on July 9th A. D. 1891, the said banking house, furniture and fixtures were of the market value of three hundred six thousand nine hundred and forty-three dollars and thirty-eight cents ($306,943.38).

115 That on September 25th, A. D. 1891, the said banking house, furniture and fixtures were of the market value of three hundred five thousand one hundred and eight dollars and eighty-two cents ($305,108.82).

That on December 2nd, A. D. 1891, the said banking house, furniture and fixtures were of the market value of three hundred six thousand three hundred and seventy-seven dollars and thirty-one cents ($306,377.31).

That on March 1st A. D. 1892, the said banking house, furniture and fixtures were of the market value of three hundred ten thousand two hundred and forty-two dollars and six cents ($310,242.06).

That thereafter, in said reports made on May 17th, July 12th, September 30th and December 9th, all in the year A. D. 1892, and on March 6th, May 4th, July 12th, October 3rd, and December 19th, all in the year A. D. 1893, and on May 4th, July 186h, October 2nd, and December 9th, all in the year A. D. 1894, and on March 5th, May 7th, July 11th, September 28th, and December 13th, all in the year A. D. 1895, and on

February 28th, A. D. 1896, the said banking house, furniture and fixtures were of the market value of three hundred ten thousand dollars ($310,000).

39. That thereafter, in the said reports made on May 7th, July 14th, October 6th, and December 19th, all in the year A. D. 1896, and on March 10th, 1897, the said banking house, furniture, and fixtures were reported to be of the market value of one hundred and fifty thousand dollars (150,000); but complainant avers and charges the fact to be, that between
116 the said dates of February 28th, A. D. 1896, and May 7th, A. D. 1896, there was not an actual or any other such a depreciation, or any considerable depreciation, of value of the said bank building, furniture, and fixtures from the sum of three hundred and ten thousand dollars ($310,000) to the sum of one hundred and fifty thousand dollars ($150,000), but that the said market valuation of the said banking house, furniture and fixtures was arbitrarily changed either as the result of some order or direction from the said Comptroller of the Currency to the said defendant National Bank and its officers and directors, or by virtue of some understanding and agreement between said defendant National Bank and its officers and directors, either with or without the action of said comptroller.

And this plaintiff is informed and believes, and so charges the fact to be, that the several increases in the several market values of the said item of banking house, furniture, and fixtures, which as hereinbefore alleged, was reported at the close of business on the 28th day of February, A. D. 1890, to be of the market value of about five thousand eight hundred dollars ($5,800) to the market value of fifty-nine thousand eight hundred and sixty-five dollars and seventy cents ($59,865.70) at the conclusion of business on May 17th A. D. 1890, and to the market value of one hundred thirteen thousand eight hundred eighty-four dollars and fifty-five cents ($113,884.55) at the conclusion of business on July 18th, A. D. 1890, and
117 to the market value of one hundred seventy-three thousand eight hundred twenty-eight dollars and ninety-nine cents ($173,828.99) at the conclusion of business on October 2nd, A. D. 1890, and to the market value of two hundred fifty thousand six hundred and eighteen dollars and thirty cents ($250,618.30) at the conclusion of business on December 19th, A. D. 1890, and to the market value of two hundred ninety thousand eight hundred and nineteen dollars and seventy-two cents ($290,819.72) at the conclusion of business on February 26th, A. D. 1891, and to the market value of three hundred thousand three hundred and ninety-two dollars and eighty-three cents ($300,392.83) at the conclusion of business on May 4th, A. D. 1891, and to the market value of three hundred six

thousand nine hundred and forty-three dollars and thirty-eight cents ($306,943.38) at the conclusion of business on July 9th, A. D. 1891, and to the market value of three hundred ten thousand two hundred and forty-two dollars and six cents ($310,242.06) at the conclusion of business on March 1st, A. D. 1892, represent the several amounts and proportions of the expenditures from time to time made by the said defendant National Bank in the erection and construction of said banking house, as the same progressed to completion, as hereinbefore alleged, as constructed under and in pursuance of said pretended contract of lease between said defendant National Bank and said defendant Schleier.

41. And this plaintiff further avers that at no time and in no one of the said reports was there any other heading
118 or item whatsoever giving the slightest intimation or information that the said bank building was not a part and parcel of the resources, or was not an asset of the said defendant National Bank, or that said defendant Schleier had or claimed to have any right, title, or interest in and to said bank building, or any part thereof, nor was there at any time in any of said reports, any intimation or information stating that there was any expenditure, liability, or indebtedness by the said defendant National Bank, which would counterbalance, charge off, and overcome the existence of said bank building, as a part of the resources and an asset of the said defendant National Bank.

42. That during all the times last aforesaid, covered by the period of said reports and the existence of said defendant National Bank, on and prior to the 30th day of October, A. D. 1897, when the said bank building was conveyed, and the possession thereof surrendered by said defendant National Bank to defendant Schleier, the said items of furniture and fixtures so included in valuation with said banking house, under the item and title of "Banking house, furniture and fixtures", as aforesaid, contained and stated in each of said reports, was not by the said defendant National Bank and its officers and directors valued at a market value to exceed the sum of about five thousand eight hundred dollars ($5,800) and that said furniture and fixtures out of said item of "Banking House, furniture and fixtures", was not in truth or in fact, as this plaintiff
is informed and believes, and so charges the fact to be,
119 at any time during the times last aforesaid, of any further, greater, or other actual market value than the said sum of about five thousand eight hundred dollars ($5,800) and that the said rest, residue, and remainder of the said several amounts of the said several valuations so reported as the market values of said item of "Banking house, furniture, and

fixtures" in excess of said sum, viz: the said sum of about three hundred and five thousand dollars ($305,000) was and is the market value reported by said defendant National Bank and its officers and directors and intended to be by them reported, as the actual market value as near as possible, of the said banking house.

13. And this plaintiff further alleges that from on or about the 1st day of February, A. D. 1890, when the said defendant National Bank first entered into the possession of the said alleged demised premises, and at all the times thereafter hereinafter mentioned until the 30th day of October, A. D. 1897, when the said defendant National Bank conveyed the title to and surrendered the possession of the said bank building unto the said defendant Schleier as herein alleged, it, said defendant National Bank, was, and during all said time continued to be in [in] the open, notorious, exclusive, and undisputed possession and occupation of the said bank building and premises, and during all the times last aforesaid, claimed to be and held itself out to its depositors, creditors, the business public of said city of Denver, and its vicinity, and to the said government officials, as being the absolute owner and
120 proprietor of the said bank building, and during all said times, claimed, represented and reported to its depositors, creditors, the business public of said city of Denver and its vicinity, and the said government officials, that the said bank building was a part and parcel of the resources and an asset of the said defendant National Bank, of the market values aforesaid.

That said possession, occupation, and holding out of ownership, and such claim, representation and report of ownership and title to said bank building, and each thereof, was so made by said defendant National Bank for the purpose of maintaining, advancing and promoting the increase in the amount and number of its depositors, patrons, and customers in the conduct of its said banking business, and was so made with the intention that the same, and each thereof, should be acted upon and relied upon by its said depositors, creditors, the business public of said city of Denver and its vicinity, and the said government officials, as a representation by said defendant bank, and by its said officers and directors of its said ownership, resources, title, and assets aforesaid, to each one of said class of persons and officials, in business dealings with it, said defendant bank in carrying on and conducting its said banking business, including the continuation of old accounts, dealings, and business, as well as the opening of new accounts, new dealings, and new business.

44. That during all the times last aforesaid, viz: between on or about the first day of February, A. D. 1890, and
121 on or about the 30th day of October, A. D. 1897, the said defendant Schleier was not in the possession or occupation of the said bank building or said alleged demised premises, or any part thereof, and did not acquire or claim to have acquired, or to be entitled to the possession or ownership of any legal or equitable interest or estate in said bank building, or any part thereof, otherwise than as entitled to the receipt of rent from said defendant National Bank for the possession of said land occupied by said bank building, until he received said conveyances thereof, and the possession thereof from said defendant bank on or about the 30th day of October, 1897, as hereinbefore alleged; that if the said defendant Schleier, during any of the said time, had any possession or claim of possession, or ownership or claim of ownership, or any right, title, or interest, legal or equitable, to the said bank building, or any part thereof, otherwise, he, the said defendant Schleier, during all said times grossly and carelessly failed and neglected to give notice thereof, or bring any knowledge or notice thereof whatsoever to the attention of said Savings Bank or its said depositors or creditors, or the business public of the said city of Denver and its vicinity, or the said government officials who at any time dealt with said defendant National Bank, until after the said defendant Schleier had so received and secured said conveyances and said possession of said bank building.

45. That during all the times last aforesaid, the said
122 defendant Schleier knew that the said defendant National Bank was, during all said time, in the open, notorious, exclusive and undisputed possession and occupation of said bank building and premises, and was during all said time claiming to be the absolute owner and proprietor of said bank building, and was then and there during all said time, so claiming, representing and reporting to its depositors, creditors, the business public of the city of Denver and its vicinity and the said government officials, that the said bank building was a part and parcel of the resources, and an asset of said defendant National Bank, and also knew that such possession, occupation, and holding out of ownership and such claim, representation, and report of ownership of title to said bank building, and each thereof, was so made by said defendant bank for the purpose of maintaining, advancing, and promoting the increase in its banking business as aforesaid alleged, and was so made with the intention that the same and each thereof, should be acted upon and relied upon as aforesaid alleged; but that the said defendant Schleier, during all of said time

last aforesaid, grossly and carelessly failed and neglected to give notice of, or bring any knowledge or notice of any right, title, claim, or interest whatsoever, legal or equitable, on the part of him, the said defendant Schleier, in and to the said bank building to the attention of the said Savings Bank or its said depositors or creditors or the business public of the said city of Denver or its vicinity, or to said government
123 officials.

That during all the times last aforesaid, the said depositors of the said Savings Bank, and the said Savings Bank, and the said depositors and creditors of said National Bank were ignorant of any claim of right, title, or interest on the part of said defendant Schleier, in and to the said bank building, or any part thereof; but during all the times last aforesaid, relied and in good faith acted upon the truth of the said possession, occupation, claim of ownership, reports, and representations by said defendant National Bank, that it was the undisputed owner of the said bank building, as a part of its said resources, and an asset thereof, and in such reliance so dealt with and made deposits, and became and were during all the said times subsequent to the making of said alleged lease, and still are, creditors of said defendant National Bank.

46. Your orator further alleges that thereafter and on or about the 20th day of November, A. D. 1899, at the September term of the Honorable District Court, a court of record of the said state of Colorado, sitting in and for the County of Arapahoe, in said state, in a certain cause pending therein, commenced by the service of summons and copy of the complaint on or about June 26, A. D. 1897, one Fermor J. Spencer, Assignee of said People's Savings Bank, as plaintiff, and said National Banking Association as defendant, a judgment as aforesaid was rendered in favor of said plaintiff, and against
124 the said defendant for the sum of four hundred and seventy-five thousand eight hundredand twenty-fivedollars and seventy-one cents ($475,825.71); said plaintiff further alleges on information and belief, and so charges the fact to be, that said judgment has been paid only in part; that the pendency of said action wherein said judgment was rendered, was well known by said defendant Schleier, at the time of said alleged pretended surrender and cancellation of said alleged pretended lease of said premises.

47. That thereafter, by an instrument bearing date the 20th day of December, A. D. 1899, the Honorable Comptroller of the Currency of the United States having become satisfied of the insolvency of the said defendant National Banking Association, he did then and there, in pursuance of the said National

Bank Act, and on or about the 20th day of December, A. D. 1899, appoint said Earl M. Cranston, as Receiver of said defendant National Banking Association, The People's National Bank of Denver, Colo., and authorized and directed the closing up and winding up of all the business and affairs of said association.

48. That thereupon said Cranston duly qualified, and at all times thereafter hereinafter mentioned until about May 27th, A. D. 1901, was the receiver of said defendant National Banking Association, The People's National Bank of Denver, Colo.

49. That thereafter, viz: On or about the 27th day of October, A. D. 1900, and prior to the commencement of
125 this action, said The Honorable Comptroller of the Currency of the Treasury of the United States authorized, empowered and directed said Cranston as receiver as aforesaid, to commence and diligently prosecute this action, and this suit was commenced, and is prosecuted in accordance with the said order and direction of an officer of the United States, to wit, the said Comptroller of the Currency of the United States.

50. That thereafter and prior to on or about the 27th day of May, A. D. 1901, the said Earl M. Cranston resigned as receiver as aforesaid, and the Honorable Comptroller aforesaid, by commission of the date last aforesaid duly appointed as his successor the said plaintiff herein, Edwin F. Brown, who thereupon duly qualified and at all times thereafter hereinafter mentioned was and still is the receiver of said defendant National Banking Association, The Peoples National Bank of Denver, Colorado.

51. That thereafter, and by order of this Honorable Court made herein dated on or about November 5th, A. D. 1901, the said Edwin F. Brown, as receiver as aforesaid, was substituted as plaintiff in lieu of and in place of the said Earl M. Cranston, as receiver as aforesaid.

52. And plaintiff avers that he is ready and willing and hereby offers to do and perform whatever shall be deemed by this Honorable Court to be equitable and conscionable under all the circumstances, as may be decreed and ordered upon a final hearing of this suit.

126 53. Wherefore, the said plaintiff, your orator, prays, that forasmuch as he is without any adequate remedy at law in the premises, that the said defendants may be compelled to answer all and singular the premises in this amended bill of complaint contained, but not under oath, the answer of said defendants and each of them under oath being expressly hereby waived.

Second. And your orator further prays that a writ of subpoena may issue out of and under the seal of this Honorable Court, and directed to the said George C. Schleier and The People's National Bank of Denver, Colo., a national banking association, who are made defendants to this, your orator's amended bill of complaint, commanding him and the said corporation, by a certain day to be named, to appear before this court, and then and there answer the premises and abide the order and decree of the court.

Third. Your orator, upon final hearing, further prays for a decree declaring and adjudging the said alleged pretended lease purporting to have been made between the said national banking Association, The People's National Bank of Denver, Colo., and said defendant George C. Schleier, dated on or about September 12, 1889, and recorded on or about September 21, A. D. 1889, in book 547, at page 1, and following pages of the records in the office of the clerk and recorder of said Arapahoe County, State of Colorado, and also the said alleged pretended instruments of writing bearing date on or about Octo-
127 ber 30, A. D. 1897, and recorded the 8th day of November, A. D. 1897, in book 1211 at pages 98 and 100 thereof, in the office of the clerk and recorder of said Arapahoe County, purporting to cancel said alleged pretended lease and yield up and surrender the same and the premises thereby alleged to be leased, together with the said bank building thereon to the said defendant, Schleier, and each of said instruments and transactions were and are absolutely null and void for all purposes, and ultra vires of the acts of the Congress of the United States in respect to the powers of national banks to acquire, own, and hold real estate, or to be and become indebted in the exercise of corporate powers, and that no title or right, legal, or equitable, ever was, or could be acquired under the same or either thereof, by the said defendant Schleier to the said bank building, and the appurtenances thereunto belonging or any part thereof.

Fourth. Your orator further prays for a full accounting in the premises.

Fifth. Your orator further prays for a decree declaring and adjudging that whatever shall be found to be due upon said accounting to the estate of said defendant national banking association, and to this plaintiff as the receiver thereof, shall be a first and prior lien and charge upon the said bank building and premises, viz: Upon the said lots numbered from one (1) to four (4) both inclusive, in said block numbered
128 seventy-five (75) in the East Division of the City of Denver, and the said bank building and improvements thereon, and that said charge and first lien be enforced by a

sale of the said lands and bank building; and that said defendant Schleier be declared, adjudged, and decreed to be a trustee of the said property and accountable to the said plaintiff as receiver of the estate of said defendant national banking association for the amount and value of said property so found to be due upon an accounting to the estate of said defendant National Bank, and this plaintiff as Receiver thereof.

Sixth. Your orator prays for such other and further relief as to the court shall seem meet and proper, and for costs of suit.

JAMES H. BROWN,
WATTERS AND KENDALL,
Solicitors and of counsel for plaintiff.

United States of America,
District of Colorado,
County of Arapahoe—ss.

Harper M. Orahood, being first duly sworn, on his oath deposes and says: That he is one of the solicitors of counsel for the said plaintiff, Edwin F. Brown, as receiver in the above entitled suit; that the said plaintiff, Edwin F. Brown was, and is, a non-resident of, and absent from, the said State of Colorado, and is not so personally familiar with the facts as
129 is this affiant.

That affiant has assisted in the preparation of the foregoing amended bill of complaint, has heard the same read, and knows the contents thereof, and that the same is true, of affiant's own knowledge in substance and in fact, except as to the matters and things therein stated on information and belief, and as to those matters, affiant verily believes them to be true; that affiant makes this verification on behalf of the said plaintiff, Edwin F. Brown, as receiver, because of affiant's personal familiarity with the facts, and the want of such familiarity by the said plaintiff, and because of his absence from the said state.

HARPER M. ORAHOOD.

Subscribed and sworn to before me, this 30th day of January, A. D. 1902.

My Commission will expire Nov. 12, 1904.

[Seal] WILLIAM A. REEF,
Notary Public.

Indorsed: No. 4416, In Equity. United States of America, District of Colorado. In the Circuit Court of the United States for the Eighth Judicial Circuit. Edwin F. Brown, as Receiver of the People's National Bank of Denver, Colorado, a National Banking Association, plaintiff vs. George C. Schleier and The

People's National Bank of Denver, Colorado, a National Banking Association, defendants. Amended bill of Complaint. Tendered February 12, 1902. Robert Bailey, Clerk.

130 58th day. Saturday, February 1st, A. D., Clerk.

Present: The Honorable Moses Hallett, District Judge, and the Honorable John A. Riner, District Judge of the District of Wyoming, assigned to the District of Colorado, and other officers as noted on the 5th day of November last past.

And before The Honorable John A. Riner, District Judge of the District of Wyoming assigned to the District of Colorado, the following proceedings were had:

Edwin F. Brown, Receiver
4116 vs. In Chancery.
George C. Schleier et al.

Bill to Set Aside Lease and for an Accounting.

This cause came on to be heard at this term upon the motion filed by the complainant herein for leave to file an amended bill of complaint, and was argued by counsel.

Thereupon upon consideration thereof

It is now ordered, adjudged, and decreed by the court that the said motion for leave to file an amended bill of complaint be and the same is hereby overruled and denied.

67th day. Monday, February 24th, A. D. 1901.

Present: The Honorable Moses Hallett, District Judge, and other officers as noted on the 5th day of November last past.

Edwin F. Brown, as Receiver or the Peoples National Bank,
4116 vs. In Chancery.
George C. Schleier et al.

Bill to set aside a lease and for an Accounting.

131 This cause coming on now to be heard, James H. Brown, Esquire, appearing as solicitor for the complainant; and thereupon, on his motion,

It is ordered by the court that the following order stand and be taken to be of the same force and effect as though entered herein on the 19th instant, towit:

And now comes the complainant by his solicitor, and prays an appeal to the United States Circuit Court of Appeals for the Eighth Circuit, which is allowed him, but upon the condition nevertheless, that the complainant give bond on such appeal in the sum of five hundred dollars ($500).

United States of America,
Eighth Judicial District—ss.

In the Circuit Court of Appeals of the United States in and for the Circuit Aforesaid.

Edwin F. Brown, as Receiver of The People's National Bank of Denver, Colorado, a National Banking Association, Appellant.

vs. In Equity.

George C. Schleier and The People's National Bank of Denver, Colorado, a National Banking Association, Appellees.

Assignment of Errors.

132 Now comes the said appellant and says that in the record and proceedings aforesaid in the above entitled cause, there is manifest error in this, to wit:

1. That the court erred in sustaining the several demurrers of the several appellees to the complaint of appellant, as amended.

2. That the court erred in not overruling the several demurrers of the several appellees to the complaint of appellant, as amended.

3. That the court abused its discretion and erred at the time immediately after handing down its opinion sustaining said demurrers of appellees herein, in refusing to give appellant time to secure a copy of said opinion, so as to prepare and present any proper amendment or amendments to his bill of complaint herein, discovered or decided by said opinion as proper to be made to establish the cause of action sought to be set forth in his complaint herein.

4. That, on sustaining said appellees' demurrers, the court abused its discretion and erred in denying appellant's request for time and for leave to amend his bill of complaint as amended, by immediately entering up final judgment, dismissing appellant's bill of complaint as amended, without giving time to appellant to secure a copy of said opinion, or to prepare and file proper or any amendments or the said amended bill of complaint.

5. That the court abused its discretion and erred
133 in denying plaintiff's request for leave to amend, when he tendered his amended bill of complaint herein.

6. That the court abused its discretion and erred in not permitting appellant to file his said amended bill of complaint herein.

Wherefore, appellant prays that the several orders and decrees sustaining the several demurrers of the said appellees to the bill of complaint of appellant as amended, and dismissing the said cause and denying the appellant the right to file his amended bill of complaint herein, may be reversed, annulled, and altogether holden for naught, and that he may be restored to all things which he hath lost by reason of the said several orders, decrees, and proceedings aforesaid.

H. M. ORAHOOD,
JAMES R BROWN,
Solicitors for appellant.

CRANSTON, PITKIN AND MOORE,
WATTERS AND KENDALL, of counsel.

Indorsed: 4116. In the Circuit Court of Appeals of the United States. Edwin F. Brown, Receiver of The People's National Bank of Denver, etc., Appellant vs. George C. Schleier et al., Appellees. Assignment of Errors. Filed Feb. 19, 1902. Robert Bailey, Clerk. Harper M. Orahood, James R. Brown et al., Solicitors for appellant.

(Bond on Appeal.)

The United States of America.
134 District of Colorado.

Know all Men by These Presents, That we, Edwin F. Brown as Receiver and Harper M. Orahood and Fermor J. Spencer as sureties The American Bonding and Trust Company of Baltimore City, are held and firmly bound unto George C. Schleier and The People's National Bank of Denver, Colorado, in the full and just sum of five hundred (500.00) dollars, to be paid to the said Schleier and Bank, their heirs, executors administrators or assigns, to which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents. Sealed with our seals and dated this seventeenth (17th) day of February, in the year of our Lord one thousand nine hundred and two.

Whereas, lately at the November term, A. D. 1901, of the Circuit Court of the United States, for the District of Colorado, sitting at Denver, in a suit pending in said court between Edwin F. Brown as Receiver of said bank complainant, and said George C. Schleier and The People's National Bank of Denver, Colorado, respondents, judgment was rendered against the said complainant, and the said complainant having prayed, and been allowed, an appeal to the United States

Circuit Court of Appeals for the Eighth Circuit, to reverse the judgment of the said Circuit Court; and a Citation directed to the said respondents and each of them, citing and admonishing them to be and appear in the United States Circuit
135 Court of Appeals, for the Eighth Circuit, at the City of St. Louis, Missouri, sixty days from and after the date of said Citation.

Now, the condition of the above obligation is such, that if the said complainant shall prosecute said appeal to effect, and answer all damages and costs, if he fails to make good his plea, then the above obligation to be void, else to remain in full force and virtue.

Sealed and delivered in presence of

FERMOR J. SPENCER. (Seal)
HARPER M. ORAHOOD, (Seal)
(Company Seal) The American Bonding and Trust Company of Baltimore City (Seal)
By RALPH W. SMITH,
Vice-President (Seal)
Attest: JUNE MOWER, Assistant Secretary.

Approved Feb'y 19th, 1902.
MOSES HALLETT,
Dist. Judge.

Indorsed: No. 4116. Circuit Court of the United States, District of Colorado. Edwin F. Brown, Receiver etc., vs. Geo. C. Schleier et al. Bond on Appeal. $500. Filed Feb. 19, 1902. Robert Bailey, Clerk.

136 Citation on Appeal.—U. S. Circuit Court of Appeals.

United States of America,
Eighth Judicial Circuit—ss.

In the United States Circuit Court of Appeals for the Eighth Judicial Circuit.

The United States of America to George C. Schleier and The Peoples' National Bank of Denver, Colorado—Greeting:

You are hereby cited and admonished to be and appear in The United States Circuit Court of Appeals for the Eighth Circuit, at the City of St. Louis, Missouri, sixty days from and after the day this Citation bears date, pursuant to an appeal allowed filed in the Clerk's Office of the Circuit Court of the United States for the District of Colorado, sitting at Denver, wherein Edwin F. Brown, as Receiver of the Peoples' National Bank of Denver, Colorado, is appellant, and you are appellees, to show cause, if any there be, why the judgment

rendered against the said appellant as in said appeal mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, the Honorable Moses Hallett, Judge of the Circuit Court of the United States for the District of Colorado, this 19th day of February, A. D. 1902.

MOSES HALLETT, Judge.

Proof of Service.

The United States of America,
District of Colorado—ss.

On this 25 day of Feby. A. D. 1902, personally appeared Melvin Edwards, Chief Office Deputy United States Marshal before me, the subscriber, Clerk of the [—] Court of the United States, for the District of Colorado, and makes oath that he delivered a true copy of the within citation to George C. Schleier and J. H. Clemes, Cashier of the Peoples Nat. Bank of Denver.

MELVIN EDWARDS,
Chief Office Deputy United States Marshal.

Seal United States Circuit Court District of Colorado.

Sworn to and subscribed before me, this 25th day of Feby. A. D. 1902.

ROBERT BAILEY, Clerk.

No. 4116. United States Circuit Court of Appeals, Eighth Circuit. Edwin F. Brown, Receiver, etc., vs. George C. Schleier et al. Citation. Filed Feb. 25, 1902. Robert Bailey, Clerk. James H. Brown, Attorney for Appellant.

137 United States of America,
District of Colorado—ss.

I, Robert Bailey, Clerk of the Circuit Court of the United States for the District of Colorado, do hereby certify the above and foregoing pages numbered from one (1) to one hundred and thirty-five (135), both inclusive, to be a true, perfect, and complete transcript and copy of the record and proceedings and of all thereof heretofore filed or entered of record in said court, and in a certain cause lately in said court pending, wherein Edwin F. Brown, Receiver of The Peoples National Bank of Denver was complainant and George C. Schleier and The Peoples National Bank of Denver were respondents, as fully and completely as the same still remain on file or of record in my office at Denver.

And I do further certify that I have annexed to and transmit herewith a copy of all opinions filed in said case.

Seal United States Circuit Court District of Colorado.

In testimony to the above, I do hereunto sign my name and affix the seal of said court, at Denver, in said District, this 26th day of February A. D. 1902.

ROBERT BAILEY, Clerk.

....., Deputy Clerk.

138 United States of America,
District of Colorado.

In the Circuit Court of the United States Eighth Judicial Circuit in and for the District of Colorado.

Edwin F. Brown, Receiver,
vs.
George C. Schleier et al.

Judge's Memorandum.

This is a bill in equity brought by the receiver of the People's National Bank of Denver against George C. Schleier and the bank, for the purpose of following certain moneys expended by the bank in the construction of the People's Bank Building, located on the corner of 16th and Lawrence streets.

The case is before the court upon demurrers filed by the defendants to the bill of complaint.

Statement of Facts.

The facts as disclosed by the bill may be briefly stated as follows: The defendant, the People's National Bank of Denver, Colorado, was incorporated on the first day of August, 1899, under the National Banking Act, with the usual powers of such corporations. The capital stock of the bank was three hundred thousand dollars. The bank was to do business in the city of Denver, and the period of its corporate existence under its charter, was twenty years.

139 In the month of September, 1889, the defendant George C. Schleier was the owner in fee simple, and in possession of lots numbered 1, 2, 3, and 4, in block 75, in the east division of the city of Denver. Said lots being at and near the corner of Lawrence and 16th streets. On the 12th of September, 1899, the defendant Bank entered into a lease with the defendant Schleier, for the lots above described for the period of ninety-nine years, from the first day of November, 1890, with an option to extend the lease for a further

period of fifty years, at an annual rental of $13,975, to be paid in twelve equal monthly instalments. In addition to the payment of rentals, the bank agreed to remove at its own cost and expense, the store rooms and buildings located on the ground, and within eighteen months from the first day of February, 1890, at its own cost and expense, to erect thereon a good substantial building, not less than four stories in height, and to cost not less than one hundred thousand dollars; said building to become at once a part of the realty. The bank further agreed to keep the building and improvements, erected on the land leased, in good order and repair at its own cost and expense. On the 21st day of September, 1899, the lease was duly recorded in the office of the county clerk and recorder of Arapahoe County, Colorado, in book No. 547, at page 1.

The bank entered into possession of the premises under the lease and thereafter removed the buildings then upon the ground, and proceeded with the construction of the new building described in the bill as the "Bank Building," at a cost of $305,725.39. The building contained, not only neces-
140 sary offices for the use of the bank, in conducting its banking business, but also, six store rooms and a number of office rooms, which the bank rented to parties not connected with it, either as stockholders or otherwise. The Bank Building was completed in January, 1891, and from that time on, until it ceased to do business, the bank occupied it. The bank continued to conduct therein its business as a National Banking Association, renting a portion of its main or first floor to a corporation, organized under the laws of the State of Colorado, and known as the "People's Savings Bank," and also renting the other offices and store rooms in said building, collecting the rents therefor.

On the 19th of July, 1893 the bank, being unable to pay its depositors in due course of business, it was, under and by virtue of the provisions of the National Banking Act, placed in the hands of the Comptroller of the Currency. One, J. B. Lozear, was appointed receiver thereof, and as such receiver took charge of the bank and its affairs from the 19th day of July, until the 21st of August, 1893. On that date, the bank having agreed to make a voluntary assessment of twenty per cent. to restore the impairment of its share capital the receiver was discharged and the directors and officers of the bank took charge and conducted the business until the appointment of the receiver herein. The bill alleges that the affairs of the defendant bank were very much involved, mixed, and com-
mingled with those of the People's Savings Bank, and
141 that by reason thereof, the Savings Bank was unable to proceed with its business, and on the 29th of June, 1895,

made a general assignment of all of its assets and estate to one Fermor J. Spencer who has, ever since, and still is in the possession, control, and management of the assets, business, and affairs of the Savings Bank, and that he, as such assignee, on the 20th day of November, 1899, procured a judgment against the defendant bank for the sum of $475,825.71 which remains unpaid.

It is alleged that in January, 1897, the defendant bank commenced to take steps looking to a voluntary liquidation and a surrender of its charter. That thereafter, and on or about the 27th day of April, 1897, the stockholders of the defendant Bank published a notice of the Bank's intention to go into liquidation and for the presentation of claims, fixing the 27th day of June, 1897, as the last day on which claims could be presented.

It is further alleged, that on the 26th day of June, 1897, Spencer, as assignee of the Savings Bank, threatened to commence and did, to the extent of serving the summons, commence an action against the defendant National Bank, and at the same time served notice of the claims and demands of the Savings Bank against the People's National Bank. That, thereafter, on the second of July, Spencer and the People's National Bank entered into a contract whereby it was agreed that Spencer should refrain from taking any further steps in that suit until the first of January, 1898, the same to be
142 without any prejudice to his rights and in consideration of the delay in filing the complaint in that suit, the defendant bank agreed that it would take no further action of any kind or nature to the prejudice of Spencer, as assignee, by the surrender of its charter or the disposal of its property.

It is further alleged that on the 26th of September, 1897, the defendant People's National Bank issued a notice and called a special meeting of its stockholders for the purpose of considering the proposition to turn over the banking house of the Bank to George C. Schleier, the owner of the land upon which the building was situated. And thereafter, the defendant Bank, in violation of the Statutes of the United States, in such case made and provided, and contrary to the principles of equity governing the distribution and disposition of assets in the payment of dividends on dissolution of insolvent corporations, in consideration of being released from the obligation of paying the taxes, assessments, and rents, then due under the lease, and of the release by Schleier, of the Bank and all its stockholders from any and all liability which might thereafter accrue against them, or either of them, under and by virtue of the covenants of the lease conveyed and surrendered the premises, covered by the lease, including the im-

provements thereon to Schleier, his heirs and assigns, that the lease was thereupon cancelled and Schleier entered into possession of the premises which he still holds.

143 Conclusions of the Court.

In disposing of the case presented by this record, it may be well to briefly consider, at the outset, just what relation the Receiver bears to this litigation. While I think it is undoubtedly true, as stated by Mr. Justice Miller in Case vs. Terrill, 11th Wallace, 202, that the receiver represents the Bank, its stockholders, its creditors, and does not in any sense represent the Government, yet it is not universally true that he holds the property subject to the same equities as the debtor held it. Many transactions would be binding upon the latter which would not be binding upon the receiver, thus all sales and securities made for the actual purpose of defrauding creditors are of this class. The receiver does not represent the bank alone. He represents all the parties in interest. In other words, he represents the law which takes charge of the property for the benefit of all of the creditors according to their respective mutual rights. He is appointed for the very purpose of securing equal justice to all creditors of the Bank and under a law which positively forbids preference. Such an officer, I think, (whatever may be the rule in case of voluntary assignments) may assert those rights of the general creditors, which the law itself creates, without being subject to all of the disabilities under which the bank would labor in combating its private engagements with favored creditors. In other words, I am inclined to the view that a receiver, under the National Banking Act, may well oppose any privi-

144 lege or preference which the law itself (unaided by a bona fide purchase or judgment) would regard as void against the general creditors in a direct contest between them and the parties claiming such preference, even though the bank, on account of some disability arising from its own acts or engagements, could not resist the claim. But in this case, the defendant Schleier is not charged with any fraud and it is not contended that the receiver represents either dissenting stockholders or creditors of the bank, who were creditors at the time of the execution of the lease. The bill is silent on this question and the court must assume that the bank had no creditors at the time the lease was made. The receiver then represents the creditors and the creditors only, whose rights accrued subsequent to the execution of the lease and the expenditure of the money used in the construction of the Bank Building.

I think it must be held, therefore, that they are in no better position to question the validity of the transaction com-

plained of than the bank itself. Could the bank avoid its obligations under the lease on the sole ground that in the execution of the lease and the construction of the building it had exceeded its charter powers and, therefore, that its acts were ultra vires? The answer to this question depends on whether there was an absolute want of power, or whether the acts complained of were merely an abuse of a power conferred. The general rule undoubtedly is that the powers of a corporation are such, and such only, as are conferred by the law under which it is incorporated.

145 The charter is the measure of the powers of every corporation, and this rule applies to National Banks as well as to other corporations, and is the test by which every corporate act is to be tried. It must be understood, however, that this rule necessarily concedes the usual proposition applicable to every legislative act, that is to say, that what is fairly implied is as much granted as if expressly enumerated. The National Banking Act expressly empowers a National Banking Association to purchase and hold real estate for certain specified purposes. Thus it may purchase and hold such real estate as may be necessary for its immediate accommodation in the transaction of its business, and this power unquestionably includes the right to take a lease for a term of years. It cannot be said, therefore, that there was an absolute want of power in the bank to take a lease for the purpose of securing to itself a banking house wherein to transact its business. The most that can be said is that in taking a lease for a term extending beyond its corporate franchise, it acted in excess of its powers. But this question can not be litigated in this suit. The bank is expressly authorized to acquire and hold title to real estate for certain purposes and to a certain amount, and the question, whether or not the particular real estate in controversy here, was acquired for the purposes authorized or in excess of the bank's powers can only be raised by the United States.

146 In National Bank vs. Mathews, 98th U. S. 628, it was held that even where a corporation is incompetent by its charter to take title to real estate, that a conveyance to it was not void, but only voidable and that the sovereign alone could object. "It is valid (said the court) until assailed in a direct proceeding instituted for that purpose." And in Silver Lake Bank vs. North (4 Johns. (N. Y.) Ch. 370) the bank was a Pennsylvania corporation and had taken a mortgage upon real estate in New York, and the defense to a bill to foreclose was, that by the act of incorporation plaintiffs were not authorized to take a mortgage, except to secure a debt previously contracted in the course of its dealings, and the money

in that case was lent after the bond and mortgage were executed. In disposing of the case, Chancellor Kent said: "Perhaps it would be sufficient for this case that the plaintiffs are a duly incorporated body with authority to contract and take mortgages and judgments; and if they should pass the exact line of their power, it would rather belong to the Government of Pennsylvania to exact a forfeiture of their charter, than for this court, in this collateral way, to decide a question of misuser by setting aside a just and bona fide contract.

The fact that the bank could not personally enjoy the interest granted by this lease, after the expiration of its franchise, would not have the effect to cut down the estate granted. The bank had the power of alienation and there is no reason why this lease could not be disposed of the same as real estate held in fee, or as any other asset of the bank. Express power is conferred upon the bank by the terms of the lease to
147 assign and transfer its interest in the leasehold estate. A lease is property and not a mere evidence of liability, and I can see no valid objection to the corporation making a lease which runs beyond the term of its corporate existence.

Even if it be admitted that the lease between the bank and the defendant Schleier, created an indebtedness in excess of its powers, as prescribed in the National Banking Act, yet I am inclined to the view that the lease must be held valid. The Statute does not in terms declare void the debt or liability so incurred. "The remedy" (said the court, in the case of Sioux City vs. Trust Company, 87th Federal, 124) "for the violation of this Statute is not the destruction of the contracts which evidence it, but the ouster and dissolution of the corporation at the suit of the State; the State alone can complain of it and the debtor cannot usurp its functions."

Neither do I think that the contention of counsel for the plaintiff, to the effect that the aggregate rent under the lease is to be considered as a liability or indebtedness of the bank, can be sustained. A covenant to pay rent creates no debt until it becomes due, and the liability incurred by the bank in this lease was merely a monthly liability to pay $1,164.58 monthly rent, which would cease upon the happening of one of several contingencies.

The lease in this case did not require the bank to build a three hundred and five thousand dollar building, neither does the complaint show that the bank, in constructing
148 the building, contracted a dollar of indebtedness, but even if the act of the bank in constructing so large a

building was ultra vires, Mr. Schleier could not have interfered with such construction, and I do not see upon what theory he can be held liable for its cost, or a lien declared upon the land in favor of the plaintiff. Lychfield vs. Ballou 114th U. S. 190.

The lease between the bank and Mr. Schleier was dated September 12th, 1899; the Bank Building was completed in January, 1891, and the building was used by the bank from that time until November, 1897, when it surrendered the building to Mr. Schleier and the lease was cancelled. These contracts have all been fully executed, and cannot now be set aside, even though they were ultra vires. In the case of Saint Louis, Vandalia, and Terre Haute Railroad Company vs. Terre Haute and Indianapolis Railroad Company, 145 U. S. 393, the court said: "When the parties are in pari delicto and the contract has been fully executed on the part of the plaintiff, by the conveyance of property, or by the payment of money, and has not been repudiated by the defendant, it is now equally well settled that neither a court of law, nor a court of equity, will assist the plaintiff to recover back the property conveyed, or money paid under the contract.

Within the rule announced in this case, Mr. Schleier, after he turned over his land to the bank and after he allowed the bank to construct its building thereon and remain in possession for seven years, could not come into court and
149 obtain possession of his property, or in any way repudiate the lease, even though the bank admitted that the lease was ultra vires. Neither could the bank (to whose rights, as we have already seen, the plaintiff succeeds), after it had surrendered the building constructed on the premises, leased, recover back, either the building or its value.

This proposition is, I think, conclusive of the case here. Many other interesting questions were raised and discussed at the hearing, and have all been carefully considered, but from the views already expressed, it becomes unnecessary to notice them separately. To do so would prolong this memorandum to an unwarranted length and no useful purpose would be subserved thereby.

Let a decree be entered dismissing the bill at complainant's costs.

Indorsed: 4116. Edwin F. Brown, Receiver, etc., vs. George C. Schleier et al. Memorandum Opinion, Riner D. J., on demurrer to bill. Filed Dec. 30, 1901. Robert Bailey, Clerk.

United States of America,
District of Colorado—ss.

I, Robert Bailey, Clerk of the Circuit Court of the United States for the District of Colorado, sitting at Denver, do hereby certify the above and foregoing pages numbered from one hundred and thirty-eight (138) to one hundred and forty-nine (149), both inclusive, to be a true, perfect, and complete
150 transcript and copy of all opinions heretofore handed down and filed in said court, and in a certain cause lately in said court pending, wherein Edwin F. Brown, Receiver of The People's National Bank of Denver, was complainant, and George C. Schleier, and The People's National Bank of Denver were respondents, as fully and completely as the same still remain on file in my office, at Denver.

In testimony to the above, I do hereunto sign my name and affix the seal of said Court, at Denver, in said District, this 26th day of February, A. D. 1902.

Seal
United States
Circuit Court
District of Colorado

ROBERT BAILEY, Clerk.

Filed Mar. 1, 1902. John D. Jordan, Clerk.

(*Appearance of Mr. James H. Brown for Appellant.*)

And on the second day of April, A. D. 1902, the appearance of Mr. James H. Brown, as counsel for appellant, was filed in the clerk's office of said circuit court of appeals in said cause, in the words and figures following to wit:

United States Circuit Court of Appeals, Eighth Circuit.

EDWIN F. BROWN, Receiver, Appellant,
vs.
GEORGE C. SCHLEIER ET AL. } No. 1724.

The clerk will enter my appearance as counsel for the appellant.
JAMES H. BROWN.

(Endorsed:) U. S. circuit court of appeals, eighth circuit. No. 1724. Edwin F. Brown, receiver, appellant, *vs.* George C. Schleier, *et al.* Appearance. Filed Apr. 2, 1902. John D. Jordan, clerk. James H. Brown, counsel for appellant.

(*Appearance of Mr. R. D. Thompson for Appellees.*)

And on the second day of April, A. D. 1902, the appearance of Mr. R. D. Thompson, as counsel for appellees, was filed in the clerk's office of said circuit court of appeals in said cause, in the words and figures following, to wit:

United States Circuit Court of Appeals, Eighth Circuit.

EDWIN F. BROWN, Receiver, Appellant,
vs.
GEORGE C. SCHLEIER ET AL. } No. 1724.

The clerk will enter my appearance as counsel for the appellees.
R. D. THOMPSON.

(Endorsed:) U. S. circuit court of appeals, eighth circuit. No. 1724. Edwin F. Brown, receiver, appellant, *vs.* George C. Schleier, *et al.* Appearance. Filed Apr. 2, 1902. John D. Jordan, clerk. R. D. Thompson, counsel for appellees.

(*Appearance of Messrs. H. M. Orahood and J. H. Brown for Appellant.*)

And on the third day of April, A. D. 1902, the appearance of Messrs. H. M. Orahood and J. H. Brown, as counsel for appellant, was filed in the clerk's office of said circuit court of appeals in said cause, in the words and figures following, to wit:

United States Circuit Court of Appeals, Eighth Circuit.

EDWIN F. BROWN, Receiver, Appellant,
vs.
GEORGE C. SCHLEIER ET AL. } No. 1724.

The clerk will enter *my* appearance as counsel for the appellant.

H. M. ORAHOOD,
J. H. BROWN,
Denver, Colorado.

(Endorsed:) U. S. circuit court of appeals, eighth circuit. No. 1724. Edwin F. Brown, receiver, appellant, *vs.* George C. Schleier, *et al.* Appearance. Filed Apr. 3, 1902. John D. Jordan, clerk. H. M. Orahood, Jas. H. Brown, counsel for appellant.

(*Appearance of Messrs. Bartels & Blood for Appellees.*)

And on the fourth day of April, A. D. 1902, the appearance of Messrs. Bartels & Blood, as counsel for appellees, was filed in the clerk's office of said circuit court of appeals in said cause, in the words and figures following, to wit:

United States Circuit Court of Appeals, Eighth Circuit.

EDWIN F. BROWN, Receiver, Appellant,
vs.
GEORGE C. SCHLEIER ET AL. } No. 1724.

The clerk will enter *my* appearance as counsel for the appellees.

GUSTAVE C. BARTELS.
JAMES H. BLOOD.

(Endorsed:) U. S. circuit court of appeals, eighth circuit. No. 1724. Edwin F. Brown, receiver, appellant, *vs.* George C. Schleier, *et al.* Appearance. Filed Apr. 4, 1902. John D. Jordan, clerk. Gustave C. Bartels and James H. Blood, counsel for appellees.

(*Appearance of Messrs. Cranston, Pitkin & Moore for Appellant.*)

And on the twenty-fifth day of April, A. D. 1902, the appearance of Messrs. Cranston, Pitkin & Moore, as counsel for appellant, was filed in the clerk's office of said circuit court of appeals in said cause, in the words and figures following, to wit:

United States Circuit Court of Appeals, Eighth Circuit.

EDWIN F. BROWN, Receiver of the People's National Bank of Denver,
vs.
GEORGE C. SCHLEIER and THE PEOPLE'S NATIONAL BANK of Denver. } No. 1724.

The clerk will enter our appearance as counsel for the appellant.

EARL M. CRANSTON,
ROB'T J. PITKIN, &
WM. A. MOORE,
As Cranston, Pitkin & Moore.

(Endorsed:) U. S. circuit court of appeals, eighth circuit. No. 1724. Edwin F. Brown, rec'r, etc., appellant, *vs.* George C. Schleier, *et al.* Appearance. Filed Apr. 25, 1902. John D. Jordan, clerk. Earl M. Cranston, Robert J. Pitkin, William A. Moore, counsel for appellant.

(*Order of Submission.*)

And on the fourth day of June, A. D. 1902, in the record of the proceedings of said circuit court of appeals is an order of submission in said cause, in the words and figures following, to wit:

United States Circuit Court of Appeals, Eighth Circuit, May Term, 1902.

WEDNESDAY, *June* 4, 1902.

EDWIN F. BROWN, as Receiver, &c., Appellant,
vs.
GEORGE C. SCHLEIER ET AL. } No. 1724.

Appeal from the circuit court of the United States for the district of Colorado.

This cause having been called for hearing in its regular order, argument was commenced by Mr. James H. Brown for appellant and concluded by Mr. R. D. Thompson for the appellees.

Thereupon, this cause was submitted to the court on the transcript of record from said circuit court and the briefs of counsel filed herein.

(*Opinion.*)

And on the tenth day of November, A. D. 1902, an opinion of said circuit court of appeals was filed in said cause, in the words and figures following, to wit:

United States Circuit Court of Appeals, Eighth Circuit, September Term, A. D. 1902.

EDWIN F. BROWN, Receiver of the People's National Bank of Denver, Colorado, Appellant,
vs.
GEORGE C. SCHLEIER and THE PEOPLE'S NATIONAL BANK of Denver, Colorado, Appellees.

No. 1724. Appeal from the Circuit Court of the United States for the District of Colorado.

Mr. James H. Brown (Mr. H. M. Orahood, Mr. Earl M. Cranston, Mr. Robert J. Pitkin and Mr. William A. Moore were with him on the brief) for the appellant.

Mr. R. D. Thompson (Mr. G. C. Bartels and Mr. James H. Blood were with him on the brief) for the appellees.

Before Sanborn and Thayer, circuit judges, and Lochren, district judge.

This case passed off below on a demurrer to the bill of complaint which was once amended before the demurrer thereto was sustained. The case made by the bill of complaint as amended, is as follows: The People's National Bank of Denver, one of the appellees, was incorporated on July 30, 1889, under the national bank act for the period of twenty years from July 1, 1889, with a capital stock of $300,000 divided into shares of $100 each. On September 12, 1889, it leased a lot of ground in the city of Denver, having a front on Lawrence street of about 99 feet, from George C. Schleier, one of the appellees, for the term of 99 years from February 1, 1890, at a yearly rent of $13,975, which rent was to be paid in monthly installments of $1164.58 during each month of the term. The lessee, The People's National Bank, hereafter sometimes termed the bank, agreed to erect within eighteen months from and after February 1, 1890, at its own cost and expense, a substantial building not less than four stories in height, to cost not less than $100,000. By the terms of the lease the lessee was to have no right to remove the building but the same was to become a part of the realty. The lease also gave to the lessee and its assigns, an option to extend the lease for the same rental for a term of fifty years from and after the expiration of ninety-nine years. The bank took possession of the demised premises and on or about the month of January, 1891, had completed the erection of a building thereon, eight stories in height, at a cost of $305,725.39. On July 19, 1893, the bank became unable to pay its depositors in due course of business and the Comptroller of the Currency appointed J. B. Lazear as receiver thereof, pursuant to the provisions of the national bank act. Said Lazear remained in possession of its assets and affairs until August 21, 1893, when he was discharged, the bank having in the meantime levied an assessment of 20 per cent. upon its shareholders and thereby restored its capital so that it was deemed safe for it to resume business. At the date last mentioned the business and affairs of the bank had become some-

what involved and commingled with the business of another bank known as the People's savings bank, which latter bank was located and did business in the bank building that had been erected by the People's national bank, in which the latter bank also transacted its business. The People's savings bank having become embarrassed, subsequently made an assignment to Fermor J. Spencer, assignee, who thereafter, on June 26, 1897, brought an action against the People's national bank, in which action he recovered a judgment against it in the sum of $475,825.71 on November 30, 1899. About the month of January, 1897, the People's national bank commenced to liquidate its affairs with a view of surrendering its charter and on April 27, 1897, its stockholders at a meeting duly held for that purpose, resolved to go into voluntary liquidation. On September 20, 1897, the bank called a meeting of its stockholders to consider a proposition to surrender the remainder of its leasehold term to Schleier, the lessor, stating in its notice to the stockholders that as the income from the property which it had leased was less than the fixed charges, it had become necessary to take some action to relieve the bank. At that time there was due for rent in arrear under the lease, and for taxes which the lessee was obliged to pay, a sum amounting altogether to about $6000. In compliance with action which appears to have been taken at said stockholders' meeting, the bank subsequently, on October 30, 1897, surrendered its leasehold term to the lessor and the lessor agreed, in consideration of such surrender, to discharge the bank from its liability to pay such rents and taxes as were then in arrears; also to discharge the bank from all further installments of rent which were to accrue under the lease. Some time after the bank had resolved to go into voluntary liquidation, to wit: on December 20, 1899, Earl M. Cranston was appointed receiver of the People's national bank for the purpose of winding up its affairs. He continued to serve as receiver until May 27, 1901, when he resigned his office and Edwin F. Brown, the present receiver and appellant, was duly appointed in his place and stead by the Comptroller of the Currency.

In view of the premises the complainant prayed that the court would decree that the lease executed by Schleier to the bank on September 12, 1889, was null and void, in view of the national bank act; that the agreement purporting to cancel and surrender said pretended lease was also null and void; that there might be a full accounting between Schleier and the receiver, and that whatever was found due to the receiver, upon said accounting, be declared a first and prior lien upon the bank building which the bank had erected, as well as upon the ground upon which it was situated. The bill was demurred to for want of equity and the demurrer was sustained, whereupon a decree was entered dismissing the complaint. To reverse such decree an appeal has been prosecuted to this court.

THAYER, circuit judge, after stating the case as above, delivered the opinion of the court.

The bill in this case appears to have been exhibited, and a recovery is sought, upon the theory that the lease of September 12, 1889, was executed by the People's national bank in excess of its corporate powers and was therefore void; that Schleier, the lessor, was a party to the act whereby the charter of the bank was violated and is therefore liable as a joint tort-feasor for all the damage which the creditors of the bank have sustained in consequence of the execution of the lease without lawful authority. It is urged, in substance, that the lease was *ultra vires* the bank because it undertook, in violation of section 5137 of the Revised Statutes, to erect a building on the demised premises which it did not contemplate using "for its immediate accommodation in the transaction of its business" but did intend to rent in part to third parties. It is also claimed that the bank exceeded its powers in making the lease because it contracted an indebtedness to an amount exceeding its capital stock, in violation of section 5202 of the Revised Statutes, by engaging to pay rent at the rate of $13,975 per annum for the term of ninety-nine years; and incidentally it is claimed that the power conferred upon national banks by section 5137 of the Revised Statutes, to *purchase* and hold such real estate "as shall be necessary for its immediate accommodation in the transaction of its business," does not comprehend the power to *lease* property with a view of erecting a building thereon for its accommodation in the transaction of its business, nor the right to lease property for a longer period than it is to exist as a corporation.

We entertain no doubt that the power conferred on national banks by section 5137 of the Revised Statutes to purchase such real estate as is needed for their accommodation in the transaction of their business, includes the power to lease property whereon to erect buildings suitable to their wants. The power to purchase land is larger than the power to lease by as much as a fee-simple estate is larger than a term for years and the greater power includes the less. In the larger towns and cities of the United States, national banks usually find it necessary to locate themselves in the business centers where property is most in demand and likewise most valuable. In the large cities it will doubtless sometimes happen that a bank cannot locate itself in a quarter where its business interests demand that it should be located, unless it leases property for a term of years and agrees with the owner to erect a building thereon suitable to its wants. That a national bank may purchase a lot of land and erect such a building thereon as it needs for the accommodation of its business, admits of no controversy under the language of the statute and we perceive no reason why it may not likewise lease property for a term of years and agree with the lessor to construct such a building as it desires, provided, always, that it acts in good faith solely with a view of obtaining an eligible location and not with a view of investing its funds in real property or embarking them in speculations in real estate. Nor do we perceive any reason why a national bank, when it purchases or leases property for the erection

of a banking-house, should be compelled to use it exclusively for banking purposes. If the land which it purchases or leases for the accommodation of its business is very valuable, it should be accorded the same rights that belong to other land-owners of improving it in a way that will yield the largest income, lessen its own rent, and render that part of its funds which are invested in realty most productive. There is nothing, we think, in the national bank act, when rightly construed, which precludes national banks, so long as they act in good faith, from pursuing the policy above outlined. The act was framed with a view of preventing such associations from investing their funds in real property except when it becomes necessary to do so, either for the purpose of securing an eligible business location, or to secure debts previously contracted, or to prevent a loss at execution sales under judgments or decrees that have been rendered in their favor. When an occasion arises for an investment in real property for either of the purposes specified in the statute, the national bank act permits banking associations to act as any prudent person would act in making an investment in real estate and to exercise the same measure of judgment and discretion. The act ought not to be construed in such a way as to compel a national bank, when it acquires real property for a legitimate purpose, to deal with it otherwise than a prudent landowner would ordinarily deal with such property.

We think that the lease in question was not invalid because it created a term that would outlast the life of the corporation in whose favor it was created. If a corporation is empowered to acquire real estate by purchase or lease for the transaction of its business, it matters not that it acquires an estate or interest which will not expire until after the death of the corporation, provided the estate or interest so acquired is vendible. *Detroit Citizens' Street Railway Co. v. City of Detroit*, 12 C. C. A. 365, 64 Fed. Rep. 628; *Nicoll v. New York & Erie R. R. Co.* 12 N. Y. 120, 128; *People v. O'Brien*, 111 N. Y. 1, 37; *State ex rel. City of St. Louis v. Laclede Gas Light Co.*, 102 Mo. 472, 482; *Union Pacific R'y Co. v. Chicago, Rock Island & Pacific R'y Co.* 163 U. S. 564, 592, 10 U. S. App. 192. If the rule were otherwise no corporation, unless it had a perpetual existence, could acquire land in fee and in that event the objection made to the lease, based on the length of the term thereby created, would apply equally well if the grant had been in fee. The lease in question created an interest in land which was doubtless supposed to be of considerable value when the lease was executed and although the interest so created was what is usually termed a chattel interest, the term being less than a freehold, yet it was an interest which was salable during the life of the corporation or on its dissolution and might have become a very valuable asset of the bank. Such terms as the one created by this lease are sometimes as marketable as estates in fee and we perceive no reason why the instrument which created it should be held invalid any more than a deed conveying an estate in fee which would outlast the life of the bank. A corporation like a natural person, should be allowed to hold and enjoy a leasehold estate that will outlast its own existence, provided it can

be alienated at or prior to its dissolution. Moreover, the rule being that in such a case as the one at bar, the personal covenant of the corporation to pay rent would not be enforceable against it after the expiration of its charter, (*Lorillard v. Clyde et al.*, 142 N. Y. 456 and cases there cited) it is not apparent that any sufficient reasons exist, based on the length of the term, to render the lease invalid.

We are furthermore of opinion that the lease in controversy was not invalid because the gross rents payable during the term would have amounted to a sum exceeding $300,000, which was the amount of the bank's original capital. The gross rents that were to accrue and would have accrued at intervals during the 99-year term, if the lease had not been surrendered or cancelled, do not, in our judgment, constitute an indebtedness, within the fair intent and meaning of section 5202 of the Revised Statutes. The national bank act confessedly confers power upon national banks to lease property which they need for the convenient transaction of their business and it contains no express provisions limiting the duration of such leases. Their duration is left to be determined by the judgment and discretion of the bank or its board of directors. Very frequently such associations are compelled to pay a large annual rental and it can hardly be supposed that Congress intended that the various installments of rent that an association has obligated itself to pay under a lease for a long term of years, which it executed because it was necessary to do so to secure an eligible business location, should be aggregated and counted as a debt within the purview of section 5202, *supra*. Rent is one of those ordinary expenditures which such associations are compelled to incur and pay; and instalments of rent that are to be earned by the occupation of the demised premises in future years, and may never in fact be earned, can hardly be esteemed an indebtedness and certainly not an indebtedness within the fair purview of section 5202, until it has accrued. In *Deane v. Caldwell*, 127 Mass. 242, 244, it was held that before the day on which rent is covenanted to be paid, it is in no sense a debt. It was also held by the circuit court of the United States for the southern district of Ohio in *Fidelity Safe Deposit & Trust Co. v. Armstrong*, 35 Fed. Rep. 567, that rent which was to accrue in future, under the terms of a long lease taken by a national bank but which had not been actually earned by occupation, could not be proven, as against the receiver of the bank as a debt, it appearing that the receiver had declined to take possession of the demised premises and assume the burdens of the lease. It was also held by the Supreme Court of the United States in *Walla Walla City v. Walla Walla Water Co.*, 172 U. S. 1, 19, that the annual instalments of rent which a city had agreed to pay to a water company for the period of twenty-five years, for the use of water, could not be aggregated and counted as a debt and added to the other indebtedness of the city for the purpose of showing that the city had contracted an indebtedness in excess of the amount permitted by its charter. See also *City of South Bend v. Reynolds*, 57 N. E. (Ind.) 706, 707. We conclude, therefore, that it cannot be successfully claimed that the bank exceeded its powers in

executing the lease because it thereby contracted an indebtedness in excess of the amount prescribed by section 5202 *supra*.

It follows from what has been said that if the lease in question was invalid when it was executed, that which rendered it so was the covenant of the bank to expend as much as $100,000 in the erection of a building on the demised premises. The bill avers that it spent more than that amount, to wit: the sum of $305,725; but the lease did not bind it to incur that expense and we fail to see any ground upon which Schleier, the lessor, can be held accountable to the creditors of the bank or to the United States because the bank saw fit to erect a more expensive building than it had engaged to build. The lessor, after the execution and delivery of the lease, was not in a situation where he could be heard to complain because the lessee was making more expensive improvements than it had agreed to make. Even if it be conceded, therefore, that the bank exceeded its powers in expending as much as $305,725 in the construction of a building, yet we are unable to hold that the lessor is chargeable with the amount of an excessive expenditure which he was powerless to prevent. Another fact to be kept in mind is that the case in hand is not one where the bank assumed to exercise a power which did not belong to it but it is a case where, in the exercise of a power which was clearly conferred, it misused or abused it by making a greater expenditure for an authorized object, than it ought to have made. Besides, the wrongful expenditure was made ten years before the present bill was filed. The building was completed in January, 1891, and the transaction at that time became an executed transaction. Moreover, while the matter was *in fieri*, no stockholder or other person authorized to complain, raised his hand to arrest the unauthorized expenditure, although the act was done publicly, nor did the United States, which granted the bank's charter, take any steps to arrest the unauthorized expenditure by the bank, on the ground that its charter was being violated. Furthermore, the act complained of was not *malum in se* but at most was simply *ultra vires*.

The question arises, therefore, whether the transaction in question is one of which the receiver of the People's national bank is authorized to complain. And this question, we think, should be answered in the negative. The receiver is one who was appointed by the comptroller under section 5234 of the Revised Statutes, to liquidate the affairs of the bank, it having become insolvent. As such receiver he is vested with all the rights of creditors and the rights of the corporation itself and may doubtless challenge any wrongful act which creditors could challenge, and maintain such suits against third parties, including actions against directors and stockholders of the bank on account of wrongful and fraudulent acts, as the corporation might maintain. *Hayden v. Thompson*, 17 C. C. A. 592, 71 Fed. Rep. 60 and cases there cited. But we think that in virtue of his office as receiver, he is not authorized to challenge or impeach an executed transaction between the bank and a third party, like the one now in hand, that was simply *ultra vires* and which, though known to the United States through its proper offi-

cials, at the time it was undertaken and consummated and while the excessive investment of its funds was being made, was neither arrested nor complained of by the United States or any creditor or stockholder of the bank. In *Case v. Terrell*, 11 Wall. 199, 202, it was held a receiver of a national bank represents the bank, its stockholders and creditors but that such officers do not *in any sense* represent the Government. A receiver of a national bank, therefore, by virtue of his appointment under section 5234, is not endowed with all those visitorial powers over national banks which the United States, acting in its sovereign capacity, may exercise. The United States, if it had thought proper to have done so, could have proceeded against the People's national bank for a forfeiture of its charter because of the alleged abuse or misuse of its charter powers. It did not do so, but permitted the investment to be made, evidently upon the theory that it would be profitable to the bank and not harmful to the public; and having done so a receiver, appointed by the comptroller years afterwards, has no right to impeach the investment and ask that it be declared void and that the property of a third party, who dealt with the bank in good faith, be charged with a lien for the sum expended, now that the investment has proven to be unprofitable.

There are some *ultra vires* acts, when committed by a national bank which the Government alone is permitted to call in question after such acts are committed. For example, in *National Bank of Xenia v. Stewart*, 107 U. S. 676, 678, where such a bank had loaned money on the security of its own stock in admitted violation of section 5201 of the Revised Statutes, the court decided, in substance, that if any one "*except the Government*" could challenge the transaction, it could only be done *before* the contract was executed. In the well-known case of *National Bank v. Matthews*, 98 U. S. 627, 628, 629, it appeared that a national bank had loaned money on the security of real property in violation of section 5136 of the Revised Statutes and was proceeding to foreclose the mortgage, whereupon the mortgagor sought to enjoin the foreclosure proceedings upon the ground that the mortgage was a nullity because the bank had no authority to accept it as security for a loan. It was held, however, that the act of making the loan on the security of real property, although *ultra vires*, did not render the mortgage void; that the mortgagor could not successfully resist the foreclosure proceedings because of the *ultra vires* character of the transaction; and that the United States *alone* could challenge it, doing so by a proceeding to oust the bank of its franchises. The court said that a private person could not directly or indirectly usurp this function of the Government but that it was the right of the Government to determine whether it would complain of the transaction. The same rule was reaffirmed in *Reynolds v. Crawfordsville Bank*, 112 U. S. 403, 413, and was followed and enforced by this court in *Sioux City Terminal Railroad & Warehouse Co. v. Trust Company of North America*, 27 C. C. A. 73, 83, 82 Fed. Rep. 124, 134. We are of opinion that the same doctrine is applicable, where, as in the present case, a national bank makes an excessive investment in real property for the purpose of obtaining

an eligible business location. Granting that it is guilty of an abuse of its powers in so doing and that while the act is under way a stockholder may enjoin the threatened wrong, yet, after the investment is made and the conveyance to the bank has been executed and delivered, it is not void but operates to vest in the bank such an estate as the conveyance, by its terms, creates. Moreover, when the conveyance is made and the funds of the bank have been invested therein, the estate so acquired becomes an asset of the bank and no one can question the transaction unless the Government, acting in its sovereign capacity, elects to do so. The remedy for the wrong is solely in the hands of the Government. A receiver appointed by the Comptroller of the Treasury on the insolvency of the bank, pursuant to section 5234 of the Revised Statutes, and armed simply with the rights of the corporation and its creditors, cannot do so.

The bill of complaint in this case does not charge or suggest that the cancellation and surrender of the lease on October 30, 1897, was inspired by an intent on the part of the bank or Schleier, the lessor, to hinder, delay or defraud the bank's creditors. The motives of Schleier, the lessor, in that transaction are not impugned. All that is alleged concerning the cancellation of the lease is that on September 20, 1897, when the bank was about to go into voluntary liquidation, a notice was issued by the president of the bank to stockholders, advising them of a meeting which had been called to be held on October 30, 1897, to consider the advisability of surrendering the lease to the lessor because the income from the building upon the demised premises had become less than the fixed charges. This statement, as contained in the notice to the stockholders, that the income was insufficient to meet the fixed charges, is denied in the bill only upon information and belief; but no allegation is contained therein showing what the income amounted to at that time, although it is admitted that two or three instalments of ground rent and certain taxes were at the time in arrears. The conclusion that may be fairly drawn from the averments of the bill, is that the leasehold had become a burden to the bank rather than an asset; that it was not salable and that the officers and stockholders considered it prudent and for the best interests of the bank to surrender the term and avoid liability for further instalments of rent. At all events, there are no allegations in the bill showing that the lease was fraudulently cancelled by collusion between the lessor and lessee and with a view of depriving the bank of an asset which was deemed to be of value, nor does the bill seem to have been filed with a view of obtaining relief on that ground. The bill was evidently framed upon the theory that the lease was void *ab initio* for want of power on the part of the bank to execute it and that the receiver could for this reason charge the amount that had been expended upon the demised premises in the erection of the building, as a lien upon the same, and upon the ground on which it was erected. We are of opinion, for the reasons already stated, that this theory is unsound. We conclude that the demurrer to the bill was properly sustained and that the decree below should be affirmed. It is so ordered.

Filed November 10, 1902.

(*Decree.*)

And on the tenth day of November, A. D. 1902, in the record of the proceedings of said circuit court of appeals is a decree in said cause, in the words and figures following, to wit:

United States Circuit Court of Appeals, Eighth Circuit, September Term, 1902.

MONDAY, *November* 10, 1902.

EDWIN F. BROWN, as Receiver of The People's National Bank of Denver, Colorado, Appellant,
vs.
GEORGE C. SCHLEIER and THE PEOPLE'S NATIONAL BANK of Denver, Colorado. } No. 1724.

Appeal from the circuit court of the United States for the district of Colorado.

This cause came on to be heard on the transcript of the record from the circuit court of the United States for the district of Colorado, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged and decreed by this court, that the decree of the said circuit court, in this cause, be, and the same is hereby, affirmed with costs; and that George C. Schleier and the People's National Bank of Denver, Colorado, have and recover against Edwin F. Brown, as receiver of the People's National Bank of Denver, Colorado, the sum of twenty dollars for their costs herein and have execution therefor.

November 10, 1902.

(*Petition for and Order Allowing Appeal.*)

And on the twenty-ninth day of December, A. D. 1902, a petition for and order allowing appeal was filed in the clerk's office of said circuit court of appeals in said cause, in the words and figures following, to wit:

UNITED STATES OF AMERICA, *ss:*

In the Supreme Court of the United States, October Term, 1902.

EDWIN F. BROWN, as Receiver of the People's National Bank of Denver, Colorado, Appellant,
vs.
GEORGE C. SCHLEIER and THE PEOPLE'S NATIONAL BANK of Denver, Colorado, Appellees.
} No. —.

Petition for Allowance of Appeal to the Supreme Court of the United States.

To the Honorable Amos M. Thayer, as one of the judges of the honorable United States circuit court of appeals for the eighth judicial circuit:

Now comes your petitioner, the said appellant, Edwin F. Brown, as receiver as aforesaid, by Harper M. Orahood, Esq., and James H. Brown, Esq., his attorneys, and respectfully shows:

1. That the appellant is a Federal officer, and as such commenced this action in the United States circuit court of the eighth judicial circuit in and for the district of Colorado, and was and is prosecuting the same under the express authorization and direction of the honorable Comptroller of the Currency of the Treasury of the United States.

2. That the above-entitled cause is one in which the jurisdiction is not dependant upon the opposite parties to the suit or controversy being aliens and citizens of the United States or citizens of different States, and does not arise under the patent laws, under the revenue laws, or under the criminal laws, or in admiralty, but, on the contrary, is an action in equity, involving the construction of the national bank act, and the jurisdiction over this cause is dependent upon the fact that the appellant, as receiver of said national bank, is a Federal official, acting under the express authorization and direction of the honorable Comptroller of the Currency aforesaid.

3. That the matter in controversy in said cause exceeds the sum of one thousand dollars ($1,000) besides costs, viz., the sum of over three hundred thousand dollars ($300,000). That the same is an action to recover the assets of the estate of said The People's National Bank of Denver, to enable the honorable comptroller, in winding up the affairs of said national bank, to pay a judgment entered against the said bank for over the sum of four hundred and seventy-five thousand dollars ($475,000), upon default in the payment of which for thirty (30) days, the honorable Earl M. Cranston, the official predecessor of appellant, was duly appointed as receiver of said national bank by the honorable comptroller as aforesaid.

4. Your petitioner avers that by an opinion handed down and judgment entered on or about the — day of November, A. D. 1902, by the honorable circuit court of appeals for the eighth judicial circuit, adversely to your petitioner, there was error committed, to the great prejudice and damage of your petitioner, this

appellant, as he verily believes and as he is advised by counsel learned in the law, as to which said judgment and opinion he herewith accompanies this petition with an assignment of the errors which he avers have been committed by such judgment and opinion of said honorable United States circuit court of appeals.

Wherefore, your petitioner prays that, as by the statute in such cases made and provided, he may be allowed an appeal, and he herewith respectfully prays an appeal and the allowance of an appeal from the said judgment and decision of said honorable United States circuit court of appeals to the honorable Supreme Court of the United States, and that a transcript of the record and proceedings and papers upon which said appeal was made, duly authenticated, may be sent to the Supreme Court of the United States, as by the statute and rules in such cases provided, and for such other order in the premises as may be necessary and proper to secure appellate relief in the premises, and your petitioner will ever pray.

H. M. ORAHOOD,
JAMES H. BROWN,
Solicitors for Appellant.

And now, to wit, it is ordered on this the 29th day of December, A. D. 1902, that the appeal be allowed as prayed for above.

AMOS M. THAYER,
Judge of the U. S. Circuit Court of Appeals.

(Endorsed:) No. 1724. In the U. S. Supreme Court. Edwin F. Brown, as receiver, etc., appellant, *vs.* George C. Schleier *et al.*, appellees. Petition for allowance of appeal to the Supreme Court of the United States, and order allowing appeal. Filed Dec. 29, 1902 John D. Jordan, clerk. Harper M. Orahood James H. Brown, solicitors for appellant.

(*Assignment of Errors.*)

And on the twenty-ninth day of December, A. D. 1902, an assignment of errors was filed in the clerk's office of said circuit court of appeals in said cause, in the words and figures following, to wit:

UNITED STATES OF AMERICA, *ss:*

In the Supreme Court of the United States, October Term, 1902.

EDWIN F. BROWN, as Receiver of the People's National Bank of Denver, Colorado, Appellant,
vs.
GEORGE C. SCHLEIER and THE PEOPLE'S National Bank of Denver, Colorado, Appellees.
} No. —. Assignment of Errors.

Now comes the said appellant and says that in the record and proceedings aforesaid in the above-entitled cause, there is manifest error in this, to wit:

1. That the honorable circuit court of appeals erred in affirming the judgment of the honorable circuit court.

2. That the honorable circuit court of appeals erred in affirming the decision of the honorable circuit court in sustaining the several demurrers of the several appellees to the complaint of appellant, as amended.

3. That the honorable circuit court of appeals erred in not reversing the judgment of the honorable circuit court, for that the honorable circuit court erred in not overruling the several demurrers of the several appellees to the complaint of appellant, as amended.

4. That the honorable circuit court of appeals erred in not reversing the judgment of the honorable circuit court, for that the honorable circuit court abused its discretion and erred at the time and immediately after the time of handing down its opinion sustaining the demurrer of appellees herein, in refusing to give appellant time to secure a copy of said opinion, so as to prepare any proper amendment or amendments to its bill of complaint herein discovered or decided by said opinion as proper to be made to establish the cause of action sought to be set forth in his complaint herein, as amended.

5. That the honorable circuit court of appeals erred in not reversing the judgment of the honorable circuit court, for that, on sustaining said appellees' demurrer, said circuit court abused its discretion and erred in denying appellant's request for time and for leave to amend his bill of complaint as amended, by immediately entering up final judgment and dismissing appellant's bill of complaint as amended, without giving time to appellant to secure a copy of said opinion or to prepare and file proper or any amendments to said amended bill of complaint tendered for filing herein.

6. That the honorable circuit court of appeals erred in not reversing the judgment of the honorable circuit court, for that the honorable circuit court abused its discretion and erred in denying plaintiff's and appellant's request for leave to amend when he tendered his amended bill of complaint herein.

7. That the honorable circuit court of appeals erred in not reversing the judgment of the honorable circuit court, for — the honorable circuit — abused its discretion and erred in not permitting appellant to file said amended bill of complaint herein.

Wherefore, appellant prays that the several orders, judgments and decrees sustaining the several demurrers of the said appellees to the bill of complaint of appellant as amended, and dismissing the said cause and denying the appellant the right to file his amended bill of complaint herein, and affirming the judgment of the honorable circuit court, may each be severally reversed, annulled and altogether holden for naught, and that he may be restored to all things which he hath lost by reason of said several orders, judgments and decrees aforesaid.

HARPER M. ORAHOOD,
JAMES H. BROWN,
Solicitors for Appellants.

(Endorsed:) No. 1724. In the U. S. Supreme Court. Edwin F. Brown, receiver, appellant *vs.* George C. Schleier *et al.* appellees. Assignment of errors. Filed Dec. 29, 1902. John D. Jordan, clerk. Harper M. Orahood & James H. Brown, solicitors for appellant.

(*Bond on Appeal.*)

And on the twenty-ninth day of December, A. D. 1902, a bond on appeal was filed in the clerk's office of said circuit court of appeals in said cause, in the words and figures following, to wit:

Know all men by these presents, that we, Edwin F. Brown, as receiver of the People's National Bank of Denver, Colorado, as principal, and the American Bonding Company of Baltimore, in the State of Maryland, and Ralph W. Smith, as sureties, are held and firmly bound unto George C. Schleier and the People's National Bank of Denver, Colorado, in the full and just sum of five hundred dollars ($500), to be paid to said Schleier and bank, their agents, attorneys, executors, administrators or assigns, to which payment well and truly to be made we bind ourselves, our successors, heirs, executors and administrators jointly and severally by these presents.

Sealed with our seals and dated this 26th day of December, in the year of our Lord one thousand nine hundred and two.

Whereas, lately at a session of the United States circuit court of appeals in and for the eighth judicial circuit, in a suit depending in said court between said Edwin F. Brown as receiver as aforesaid, as appellant, and said George C. Schleier and The People's National Bank of Denver, Colorado, as appellees, a final judgment was rendered against said Brown as receiver, and the said Brown, as receiver, having duly prayed and obtained the allowance of an appeal and filed a copy thereof in the clerk's office of the said court to reverse the said judgment in the aforesaid suit, and a citation directed to the said George C. Schleier and the said The People's National Bank of Denver, Colorado, citing and admonishing them and each of them to be and appear at the Supreme Court of the United States to be holden at Washington on the 28th day of January, A. D. 1903.

Now, the condition of the above obligation is such that, if the said Edwin F. Brown, as receiver, and his successors, shall prosecute said appeal to effect, and answer all costs if he fail to make his plea good, then the above obligation to be void, else to remain in full force and virtue.

EDWIN F. BROWN, *As Rec'v'r, &c.*,
By JAS. H. BROWN, *Att'y.* [SEAL.]
AMERICAN BONDING COMPANY
OF BALTIMORE,
By RALPH W. SMITH, *Vice-President.*

Attest:
[SEAL.]
L. K. HARDEN, *Ass't Secretary.*
RALPH W. SMITH. [SEAL.]

Approved this 29th day of December, A. D. 1902.

AMOS M. THAYER,
U. S. Circuit Judge, Eighth Circuit.

STATE OF COLORADO,
County of Arapahoe, City and County of Denver, } ss:

On this 26th day of December, A. D. 1902, before me, the subscribed notary public, for the State of Colorado, residing in the city — Denver, came Ralph W. Smith, vice-president of the American Bonding Company of Baltimore, to me personally known to be the vice-president of the said American Bonding Company of Baltimore, a corporation described in and which executed as surety the annexed bond, and being by me first duly sworn, stated, that L. K. Harden is assistant secretary of the American Bonding Company of Baltimore, and that the said Ralph W. Smith, as vice-president, and L. K. Harden as assistant secretary, duly executed the preceding instrument by order and authority of the directors of the said American Bonding Company of Baltimore, and that the seal affixed to the preceding instrument is the corporate seal of the said company; that the said corporate seal was duly affixed by the authority of the directors of the said company; that the said American Bonding Company of Baltimore, of the State of Maryland is duly and legally incorporated under the laws of the State of Maryland, is authorized under its charter to transact and is transacting the business of a surety company in the State of Missouri & District of Columbia that said company has complied with all the laws of the State of Missouri & District of Columbia relating to surety companies doing business in that State; and is duly licensed and legally authorized by such State to qualify as sole surety on the bond hereto annexed; that the said company is authorized by its articles of incorporation, and by its by-laws, to execute the said bond; and that said company has assets consisting of capital stock paid in cash and surplus over and above all its liabilities of every kind, exceeding the sum of one million dollars ($1,000,000.00), and that said Ralph W. Smith, as vice-president, and L. K. Harden as assistant secretary of the said company, have been duly authorized by the board of directors of the company to execute the foregoing bond.

RALPH W. SMITH,
Vice-President.

Subscribed and sworn to before me, this 26″ day of Dec., A. D. 1902.

My commission expires Mar. 9″, 1904.
" " " Dec. 4″, 1906.

[SEAL.] JUNE A. MOWER,
Notary Public.

(Endorsed:) Bond. Edwin F. Brown, receiver, *vs.* George C. Schleier & The People's National Bank. Filed Dec. 29, 1902. John D. Jordan, clerk.

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(*Citation.*)

And on the fifth day of January, A. D. 1903, a citation, with the marshal's return endorsed thereon, was filed in the clerk's office of said circuit court of appeals, the original of which is hereto attached and herewith returned.

The United States of America to George C. Schleier and The People's National Bank of Denver, Colorado, Greeting:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States, at the city of Washington, D. C., thirty days from and after the date this citation bears date, pursuant to an appeal allowed and filed in the clerk's office of the United States circuit court of appeals for the eighth circuit, wherein Edwin F. Brown, as receiver of the People's National Bank of Denver, Colorado, is appellant and you are appellees, to show cause, if any there be, why the decree rendered against the said appellant, as in said appeal mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, the Honorable Amos M. Thayer, one of the judges of the United States circuit court of appeals, for the eighth circuit, this 29th day of December in the year of our Lord one thousand nine hundred and two.

AMOS M. THAYER,
United States Circuit Judge for the Eighth Circuit.

[Endorsed:] Original. 1291. Supreme Court of the United States, October term, 1902. No. —. Edwin F. Brown, as receiver of the People's National Bank of Denver, Colorado, appellant, *vs.* George C. Schleier, *et al.*, Citation. Filed Jan. 5—1903. John D. Jordan, clerk.

UNITED STATES OF AMERICA, *District of Colorado,* } *ss:*

I hereby certify that I received the within citation on the first day of January, A. D. 1903, and that thereafter and on the second day of January, A. D. 1903, I duly executed the same at the city of Denver, within the said district, by handing to and leaving with the within-named appellees, George C. Schleier and The People's National Bank of Denver, Colorado, true and correct copies of the within writ, by delivering said copies personally to the said Schleier and to James H. Clemes, as the cashier of said The People's National Bank of Denver, Colorado.

DEWEY C. BAILEY,
U. S. Marshal for said District,
By A. L. LONG,
Deputy Marshal.

UNITED STATES OF AMERICA, } ss:
District of Colorado, }

I hereby certify that I received the within citation on the first of January, and I duly executed the same by handing to and leaving with, a true and correct copy of the within writ to George C. Schleier and James H. Clemes, personally on January 2nd, 1903, at Denver, Colorado.

DEWEY C. BAILEY, *Marshal,*
By A. L. LONG, *Deputy.*

(*Clerk's Certificate.*)

United States Circuit Court of Appeals, Eighth Circuit.

I, John D. Jordan, clerk of the United States circuit court of appeals for the eighth circuit, do hereby certify that the foregoing one hundred twenty-three pages contain full, true and complete copies of all the pleadings, proceedings and record entries, including the opinion of said circuit court of appeals, in a certain cause wherein Edwin F. Brown, as receiver of the People's National Bank of Denver, Colorado, was appellant, and George C. Schleier and The People's National Bank of Denver, Colorado, were appellees, as full, true and complete as the same remain on file and of record in my office.

I do further certify that the original citation with the marshal's return endorsed thereon is hereto attached and herewith returned.

In testimony whereof, I hereunto subscribe my name and affix the seal of said circuit court of appeals, at office in the city of St. Louis, Missouri, in the eighth circuit, this tenth day of January, A. D. 1903.

Seal United States Circuit Court of Appeals, Eighth Circuit.

JOHN D. JORDAN,
Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

Endorsed on cover: File No. 18,782. U. S. circuit court of appeals, 8th circuit. Term No. 554. Edwin F. Brown, as receiver of the People's National Bank of Denver, Colorado, appellant, *vs.* George C. Schleier and The People's National Bank of Denver, Colorado. Filed January 13, 1903.